

Healthcare and Regulatory Subcommittee Meeting

Monday, August 12, 2019

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AGENDA

South Carolina House of Representatives



Legislative Oversight Committee

HEALTHCARE AND REGULATORY SUBCOMMITTEE

Chairman John Taliaferro (Jay) West, IV

The Honorable Robert L. Ridgeway, III

The Honorable Bill Taylor

The Honorable Chris Wooten

Monday, August 12, 2019

1:00 p.m.

Room 410 - Blatt Building

Pursuant to Committee Rule 6.8, S.C. ETV shall be allowed access for internet streaming whenever technologically feasible.

AGENDA

- I. Approval of Minutes**
- II. Discussion of study of the Department of Mental Health**
- III. Adjournment**

MEETING MINUTES

Chair Wm. Weston J. Newton

*First Vice-Chair:
Laurie Slade Funderburk*

Legislative Oversight Committee

*Micajah P. (Micah) Caskey, IV
Neal A. Collins
Patricia Moore (Pat) Henegan
William M. (Bill) Hixon
Jeffrey E. (Jeff) Johnson
Marvin R. Pendarvis
Tommy M. Stringer
Bill Taylor
Robert Q. Williams*



South Carolina House of Representatives

*Gary E. Clary
Chandra E. Dillard
Lee Hewitt
Joseph H. Jefferson, Jr.
Mandy Powers Norrell
Robert L. Ridgeway, III
Edward R. Tallon, Sr.
John Taliaferro (Jay) West, IV
Chris Wooten*

*Jennifer L. Dobson
Research Director*

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*Carmen J. McCutcheon Simon
Research Analyst/Auditor*

*Kendra H. Wilkerson
Fiscal/Research Analyst*

**Healthcare and Regulatory Subcommittee Meeting
Tuesday, July 23, 2019, at 10:00 am
Blatt Building Room 410**

Archived Video Available

- I. Pursuant to House Legislative Oversight Committee Rule 6.8, South Carolina ETV was allowed access for streaming the meeting. You may access an archived video of this meeting by visiting the South Carolina General Assembly's website (<http://www.scstatehouse.gov>) and clicking on *Committee Postings and Reports*, then under *House Standing Committees* click on *Legislative Oversight*. Then, click on *Video Archives* for a listing of archived videos for the Committee.

Attendance

- I. Chair Jay West calls the Healthcare and Regulatory Subcommittee to order on Tuesday, July 23, 2019, in Room 410 of the Blatt Building. All members of the Subcommittee are present for all or a portion of the meeting.

Minutes

- I. House Rule 4.5 requires standing committees to prepare and make available to the public the minutes of committee meetings, but the minutes do not have to be verbatim accounts of meetings. It is the practice of the Legislative Oversight Committee to provide minutes for its subcommittee meetings.
- II. Representative Wooten moves to approve the meeting minutes from the July 8, 2019, meeting. The motion passes.

Representative Wooten's motion to approve the meeting minutes from the July 8, 2019, meeting.	Yea	Nay	Not Voting (Absent)	Not Voting (Present)
Rep. Robert Ridgeway	✓			
Rep. Bill Taylor	✓			
Rep. Chris Wooten	✓			
Rep. Jay West	✓			

Meeting

- I. Chair West explains that this is the Subcommittee's tenth meeting with the Department of Mental Health, and that the purpose is to continue to learn more about the agency's administrative services.
- II. Chair West makes a statement regarding the purpose of oversight studies and explains that all testimony given to this subcommittee, which is an investigating committee, must be under oath. He reminds those sworn in during prior meetings that they remain under oath. He swears in DMH staff not previously sworn in.
- III. Mark Binkley (Interim Director) and the below DMH staff provide testimony processes related to reporting and investigating the death of a vulnerable adult and agency administrative services:
 - Mark Binkley, JD, Interim State Director
 - Debbie Calcote, Deputy Director, Division of Administrative Services
 - Tracey Richardson, Director of Transition Services, Division of Medical Affairs
 - Sandy Hyre, Director, Evaluation, Training and Research (ETR), Division of Medical Affairs
 - William Wells, Program Manager, Emergency Preparedness and Response, Behavioral Health, Division of Medical Affairs
 - Peter Creighton, Director, Physical Plant Services, Division of Administrative Services
 - Elizabeth Hall, Chief, SCDMH Office of Public Safety
- IV. Subcommittee members ask, and agency staff respond to questions about the following subjects:
 - a. Seclusion and restraint training;
 - b. Citations;
 - c. Employee duties to report abuse, neglect, and exploitation;
 - d. Changes to training procedures;
 - e. BEST protocol;
 - f. Employee discipline;
 - g. Transitions of patients into communities;
 - h. PRISMA residency program;
 - i. Continuing education allowance;
 - j. Expert evaluation of program;
 - k. Continuity of care through disaster;
 - l. Deferred maintenance plan;
 - m. Telepsychiatry;
 - n. Fleet vehicle support;
 - o. Contract bids; and

p. Partnerships, Particularly with the Department of Public Safety.

V. There being no further business, the meeting is adjourned.

STUDY TIMELINE

Legislative Oversight Committee Actions

- May 3, 2018 - Prioritizes the agency for study
- May 9, 2018 - Provides the agency with notice about the oversight process
- July 17 – August 20, 2018 - Solicits input from the public about the agency in the form of an online survey
- January 14, 2019 - Holds **Meeting 1** to **obtain public input** about the agency

Healthcare and Regulatory Subcommittee Actions

- February 5, 2019- Holds **Meeting 2** with the agency to receive an overview of the agency's **history, mission, organization, products, and services**
- February 19, 2019 – Holds **Meeting 3** with the agency to receive testimony about the **Inpatient Services Division**
- March 5, 2019 – Holds **Meeting 4** with the agency to receive further testimony about the **Inpatient Services Division**
- March 19, 2019- Holds **Meeting 5** with the agency to receive further testimony about the **Inpatient Services Division**, and discuss responses to earlier-asked questions
- April 2, 2019 – Holds **Meeting 6** with the agency to receive testimony about **Community Mental Health Services**
- April 23, 2019 – Holds **Meeting 7** with the agency to receive testimony about **Community Mental Health Services**
- May 7, 2019 – Holds **Meeting 8** with the agency to receive testimony about **Community Mental Health Services** staffing and **facility deferred maintenance**
- June 20, 2019 – Holds **Meeting 9** with the agency to receive testimony about **Community Mental Health Services**
- July 8, 2019 – Holds **Meeting 10** with the agency to receive testimony about **Budget, Medical Affairs, and Administrative Services**
- July 23, 2019 – Holds **Meeting 11** with the agency to receive testimony about **Administrative Services**

Department of Mental Health Actions

- March 11, 2015- Submits its **Annual Restructuring and Seven-Year Plan Report**
- January 8, 2016- Submits its **2016 Annual Restructuring Report**
- September 2016- Submits its **FY 2015-16 Accountability Report/Annual Restructuring Report**
- September 2017- Submits its **FY 2016-17 Accountability Report/Annual Restructuring Report**
- September 2018 – Submits its **FY 2017-18 Accountability Report/Annual Restructuring Report**

- November 19, 2018- Submits its **Program Evaluation Report**
- February- TBD 2019- Meets with and **responds to Subcommittee inquiries**

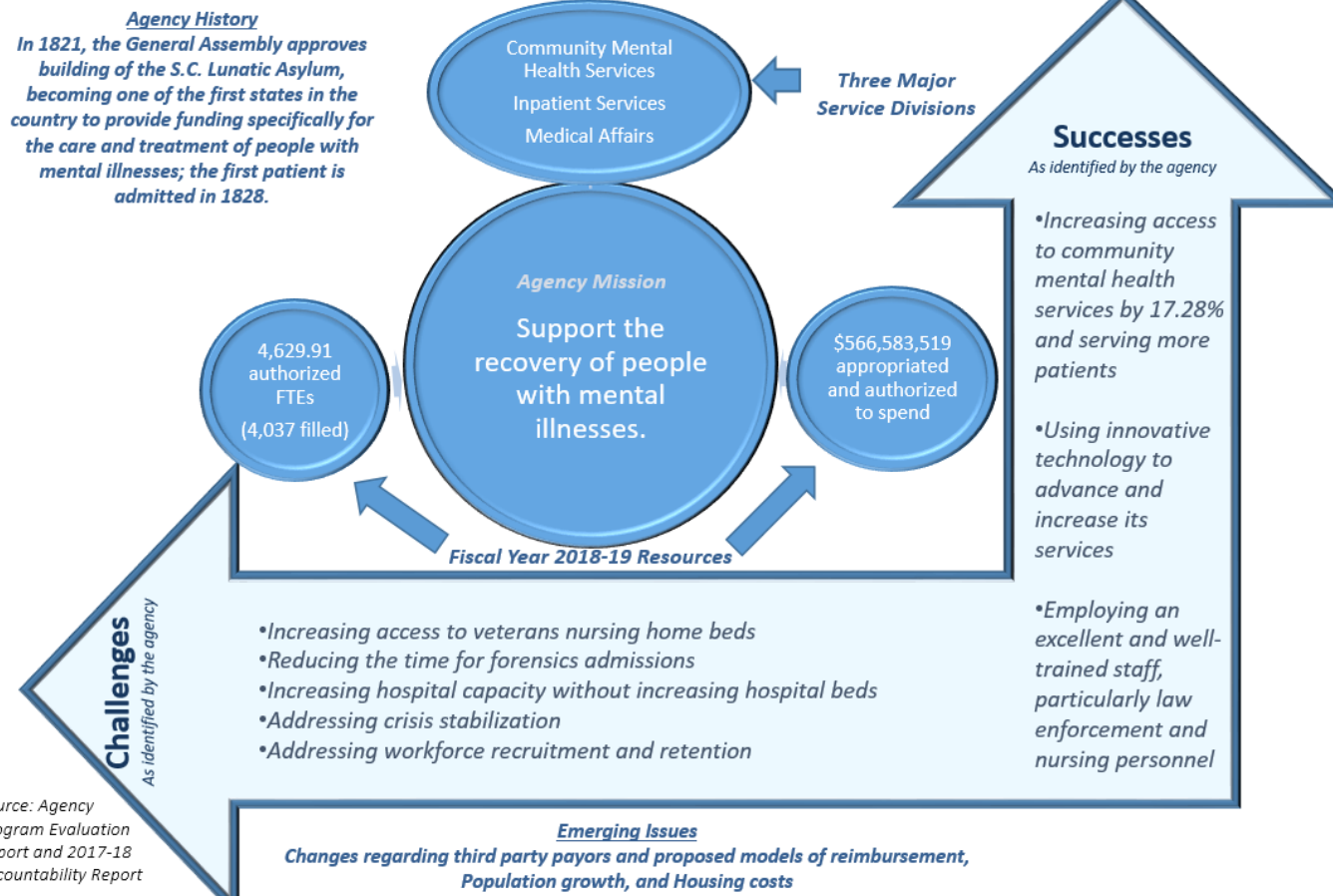
Public's Actions

- July 17 – August 20, 2018 - Provides input about the agency via an **online public survey**
- January 14, 2019 – Provides testimony at public input meeting

AGENCY OVERVIEW

Snapshot

Department of Mental Health



Source: Agency Program Evaluation Report and 2017-18 Accountability Report

AGENCY PRESENTATION

South Carolina Department of Mental Health

South Carolina House of Representatives
Legislative Oversight Committee
Healthcare and Regulatory Subcommittee

Summary of Agency Requests
for
Agency Study Report

August 12, 2019

Summary of Agency Requests for Agency Study Report

- Statutory Considerations
- Funding Needs
- Revisions to Processes Based Upon Participation in Study

Passage of Amendments to the Sexually Violent Predator Act (Section 44-48-10, et. seq.) Embodied in Pending Legislation, S.797

Agency Request - 1

Statutory Considerations

Amend Statutes in Title 44, Chapter 23
Regarding Commitments of Defendants for
Treatment Services to Restore Capacity to
Stand Trial

Agency Request - 2

Statutory Considerations

Amend Statutes in Title 44, Chapter 23
Regarding Defendants Found to Lack
Capacity to Stand Trial and Further Found to
be Unlikely to be Able to be Restored

Agency Request - 3

Statutory Considerations

Consideration of Coverage in South Carolina Torts Claims Act for Contractors Providing Services on Behalf of State Agency

Agency Request - 4

Statutory Considerations

Agency Request - 5

Statutory Considerations

Amend Section 44-22-40 to make the list of individuals who may provide substitute consent consistent with recent changes to the list of individuals in the Adult Healthcare Consent Act

Agency Request - 6

Statutory Considerations

Amend Act No. 65 of 2019, which amended Section 44-53-360(j) to require practitioners to electronically prescribe controlled substances unless exempted from the subsection, to add an exemption for SCDMH practitioners and facilities

Transfer of Pass-Through Funds Not Directly Related to the Mission of the Agency

Agency Request - 7

Statutory Considerations

Funding Needs

Revisions to Processes Based Upon Participation in Study

- Survey Results Reported by Level of Satisfaction Category Rather Than Aggregated
- Indicators Reported by Absolute Amount and Percentage of the Whole
- Indicators of Efficiency

SCDMH Senior Management

Mark W. Binkley, Esq., Interim State Director

Robert Bank, M.D., Medical Director

Versie Bellamy, RN, MN, DNP, Deputy Director, Inpatient Services

Deborah Blalock, M.Ed., LPCS, CPM, Deputy Director, Community
Mental Health Services

Debbie Calcote, MA, Deputy Director, Administrative Services

Kimberly Rudd, M.D., Medical Director, Inpatient Services

Beth Hutto, Esq., General Counsel

SCDMH Legislative Liaison

Rochelle Caton, Esq., Director, Office of Client Advocacy/
Legislative Liaison

(898-8570, 201-8683, rochelle.caton@scdmh.org)

[End]

APPENDIX A. DOCUMENTS RELATED TO REQUEST 1

South Carolina General Assembly
123rd Session, 2019-2020

Download This Version in Microsoft Word format

Bill 797

~~Indicates Matter Stricken~~

Indicates New Matter

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

A BILL

TO AMEND SECTION 44-48-40(B) OF THE 1976 CODE, RELATING TO THE EFFECTIVE DATE OF PAROLE OR RELEASE, TO PROVIDE AN EFFECTIVE DATE FOR SUPERVISED RE-ENTRY FOR A PERSON CONVICTED OF A SEXUALLY VIOLENT OFFENSE; TO AMEND SECTION 44-48-50 OF THE 1976 CODE, RELATING TO THE MULTIDISCIPLINARY TEAM, APPOINTMENTS, THE REVIEW OF RECORDS, AND MEMBERSHIP OF THE MULTIDISCIPLINARY TEAM, TO PROVIDE FOR THE ASSESSMENT OF WHETHER OR NOT THERE IS PROBABLE CAUSE TO BELIEVE A PERSON SATISFIES THE DEFINITION OF A SEXUALLY VIOLENT PREDATOR AND REPORTING REQUIREMENTS AND TO PROVIDE FOR THE MEMBERSHIP OF THE MULTIDISCIPLINARY TEAM; TO AMEND SECTION 44-48-80(D) OF THE 1976 CODE, RELATING TO TAKING A PERSON INTO CUSTODY, HEARINGS, AND EVALUATION, TO PROVIDE FOR AN EVALUATION BY A COURT-APPOINTED EVALUATOR WITHIN A CERTAIN TIME PERIOD, TO PROVIDE FOR AN INDEPENDENT EVALUATION BY A QUALIFIED INDEPENDENT EVALUATOR WITHIN A CERTAIN TIME PERIOD, AND TO PROVIDE FOR AN EXTENSION IN EXTRAORDINARY CIRCUMSTANCES; TO AMEND SECTION 44-48-90(B) AND (C) OF THE 1976 CODE, RELATING TO A TRIER OF FACT, THE CONTINUATION OF A TRIAL, THE ASSISTANCE OF COUNSEL, THE ACCESS OF EXAMINERS TO A PERSON, AND THE PAYMENT OF EXPENSES, TO MAKE CONFORMING CHANGES, TO PROVIDE THAT CERTAIN CASES SHALL BE GIVEN PRIORITY STATUS, AND TO PROVIDE FOR COUNSEL AND PAYMENT AND COSTS FOR A QUALIFIED INDEPENDENT EVALUATOR FOR AN INDIGENT PERSON; TO AMEND SECTION 44-48-100(B) OF THE 1976 CODE, RELATING TO PERSONS INCOMPETENT TO STAND TRIAL, TO PROVIDE THAT A COURT SHALL CONDUCT A NON-JURY HEARING FOR A PERSON CHARGED WITH A SEXUALLY VIOLENT OFFENSE WHO HAS BEEN FOUND INCOMPETENT TO STAND TRIAL, WHO IS ABOUT TO BE RELEASED, AND WHOSE COMMITMENT IS SOUGHT; TO AMEND SECTION 44-48-110 OF THE 1976 CODE, RELATING TO THE PERIODIC MENTAL EXAMINATION OF COMMITTED PERSONS, REPORTS, PETITIONS FOR RELEASE, HEARINGS, AND TRIALS TO CONSIDER RELEASE, TO MAKE CONFORMING CHANGES, TO PROVIDE FOR AN EVALUATION BY A DEPARTMENT OF MENTAL HEALTH-DESIGNATED EVALUATOR WITHIN A CERTAIN TIME PERIOD AND UNDER CERTAIN CONDITIONS, AND TO PROVIDE FOR PERIODIC REVIEW HEARINGS AND THE PRESENCE OF THE RESIDENT AND THE DEPARTMENT OF MENTAL HEALTH-DESIGNATED EVALUATOR AT HEARINGS; TO AMEND CHAPTER 48, TITLE 44 OF THE 1976 CODE, RELATING TO THE SEXUALLY VIOLENT PREDATOR ACT, BY ADDING SECTION 44-48-115, TO PROVIDE THAT A RESIDENT SHALL HAVE THE RIGHT TO CHALLENGE COMMITMENT UNDER CERTAIN CIRCUMSTANCES AND TO PROVIDE CERTAIN CONDITIONS THEREOF; TO AMEND SECTION 44-48-120(B) OF THE 1976 CODE, RELATING TO HEARINGS ORDERED BY A COURT, EXAMINATION BY A QUALIFIED EXPERT, AND THE BURDEN OF PROOF, TO MAKE

CONFORMING CHANGES, TO PROVIDE FOR THE PRESENCE OF THE DEPARTMENT OF MENTAL HEALTH-DESIGNATED EVALUATOR AT A HEARING OR TRIAL, AND TO PROVIDE THAT A RESIDENT MAY SEEK ANOTHER EVALUATION AT HIS OWN EXPENSE; TO AMEND SECTION 44-48-150 OF THE 1976 CODE, RELATING TO EVIDENTIARY RECORDS AND A COURT ORDER TO OPEN SEALED RECORDS, TO PROVIDE FOR THE RELEASE OF RECORDS TO THE ATTORNEY GENERAL AND COUNSEL OF RECORD; TO AMEND SECTION 24-21-32(C) OF THE 1976 CODE, RELATING TO REENTRY SUPERVISION AND REVOCATION, TO PROVIDE THAT CERTAIN INMATES ARE NOT ELIGIBLE FOR SUPERVISED RE-ENTRY UNTIL THE RESOLUTION OF CERTAIN PROCEEDINGS; AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 44-48-30 of the 1976 Code is amended by adding an appropriately numbered new item to read:

"() 'Resident' means a person who has been committed as a sexually violent predator for the purposes of long-term control, care, and treatment."

SECTION 2. Section 44-48-30(9) of the 1976 Code is amended to read:

"(9) 'Likely to engage in acts of sexual violence' means that a person is predisposed to engage in acts of sexual violence and more probably than not will engage in ~~the person's propensity to commit~~ acts of sexual violence ~~is of~~ to such a degree as to pose a menace to the health and safety of others."

SECTION 3. Section 44-48-40(B) of the 1976 Code is amended to read:

"(B) If a person has been convicted of a sexually violent offense and the Board of Probation, Parole and Pardon Services or the Board of Juvenile Parole intends to grant the person a parole or the South Carolina Department of Corrections or the Board of Juvenile Parole intends to grant the person a conditional release or supervised re-entry, then the parole, ~~or~~ the conditional release, or the supervised re-entry must be granted to be effective one hundred eighty days after the date of the order of parole, ~~or~~ conditional release, or supervised re-entry. The Board of Probation, Parole and Pardon Services, the Board of Juvenile Parole, or the South Carolina Department of Corrections immediately must send notice of the parole, ~~or~~ conditional release, or supervised re-entry of the person to the multidisciplinary team, the victim, and the Attorney General. If the person is determined to be a sexually violent predator pursuant to this chapter, then the person is subject to the provisions of this chapter even though the person has been released on parole, ~~or~~ conditional release, or supervised re-entry."

SECTION 4. Section 44-48-50 of the 1976 Code is amended to read:

"Section 44-48-50. (A) The Director of the Department of Corrections must appoint a multidisciplinary team to review the records of each person referred to the team pursuant to Section 44-48-40. These records may include, but are not limited to, the person's criminal offense record, any relevant medical and psychological records, treatment records, victim's impact statement, and any disciplinary or other records formulated during confinement or supervision. The team, within thirty days of receiving notice as provided for in Section 44-48-40, must assess whether or not there is probable cause to believe the person satisfies the definition of a sexually violent predator. If it is determined that probable cause does exist ~~that the person satisfies the definition of a sexually violent predator~~, then the multidisciplinary team must forward a report of the assessment to the prosecutor's review committee and notify the victim. The assessment must be accompanied by all records relevant to the assessment. Membership of the team must include:

- (1) a representative from the Department of Corrections;
- (2) a representative from the Department of Probation, Parole and Pardon Services;

(3) a representative from the Department of Mental Health who is a trained, qualified mental health clinician with education, training, or experience in assessing, examining, or treating sex expertise in treating sexually violent offenders;

(4) a retired judge appointed by the Chief Justice who is eligible for continued judicial service pursuant to Section 2-19-100; and

(5) an attorney with substantial experience in the practice of criminal defense law to be appointed by the Chief Justice to serve a term of one year.

(B) The Director of the Department of Corrections or his designee appointed pursuant to ~~item (1)~~ subsection (A)(1) shall be the chairman of the team."

SECTION 5. Section 44-48-80(D) of the 1976 Code is amended to read:

"(D) If the probable cause determination is made, then the court must direct that, upon completion of the criminal sentence, the person must be transferred to a local or regional detention facility pending the conclusion of the proceedings under this chapter. The court must further direct that the person be transported to an appropriate facility of the South Carolina Department of Mental Health for an evaluation as to whether the person is a sexually violent predator and must order the person to comply with all testing and assessments deemed necessary by a court-appointed evaluator. ~~The evaluation must be conducted by a qualified expert appointed by the court at the probable cause hearing.~~ The expert court-appointed evaluator must complete the evaluation within sixty ninety days after the Department of Mental Health provides written certification to the Attorney General's Office and the person's legal counsel that it has received all medical, psychological, criminal offense, and disciplinary records and reports concerning the person but not greater than one hundred eighty days after the probable cause order is filed completion of the probable cause hearing. The court may grant one extension upon request of the court-appointed evaluator expert and a showing of good cause. ~~Any further extensions only may be granted for extraordinary circumstances.~~ After the evaluation by the court-appointed evaluator, if the person or the Attorney General seeks an independent evaluation by a qualified independent evaluator, pursuant to Section 44-48-90(C), then that evaluation must be completed within ninety days after receipt of the report by the court-appointed evaluator. The court may grant an extension upon request of the independent evaluator and a showing of extraordinary circumstances. Any evaluator who will be submitted as an expert at either a hearing or trial must submit a written report available to both parties."

SECTION 6. Section 44-48-90(B) and (C) of the 1976 Code is amended to read:

"(B) Within thirty days after the determination of probable cause by the court pursuant to Section 44-48-80, the person or the Attorney General may request, in writing, that the trial be before a jury. If no request is made, the trial must be before a judge in the county where the offense was committed within ninety days of the date the qualified independent evaluator requested by the person or Attorney General pursuant to Section 44-48-90(C) court appointed expert issues a report the evaluation as to whether the person is a sexually violent predator, pursuant to Section 44-48-80(D), or, if there is no term of court, the next available date thereafter, and the case shall be treated as a priority case. If neither party seeks an independent evaluation a request is made, then the court trial must be schedule a trial before a judge, or a jury if a jury trial is requested, in the county where the offense was committed within ninety days of the date the court appointed evaluator expert issues the evaluation report as to whether the person is a sexually violent predator, pursuant to Section 44-48-80(D), or, if there is no term of court, the next available date thereafter. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and only if the respondent will not be substantially prejudiced. All cases pursuant to this chapter shall be given priority status for the purposes of scheduling any hearings and trials. The Attorney General must notify the victim, in a timely manner, of the time, date, and location of the trial. At all stages of the proceedings under this chapter, a person subject to this chapter is entitled to the assistance of counsel, and if the person is indigent, the court must appoint counsel designated by the Office of Indigent Defense to handle sexual predator cases to assist the person.

(C) Upon receipt of the evaluation issued by the court appointed evaluator expert as to whether the person is a sexually violent predator pursuant to Section 44-48-80(D), the person or the Attorney General may retain a qualified independent evaluator expert to perform a subsequent examination. If the court-appointed evaluator determines that the person is not a sexually violent predator, then the Attorney General, with notice to the person, may seek an independent evaluation pursuant to this section. If the court-appointed evaluator determines that the person is a sexually violent predator, then the person, with notice to the Attorney General, may seek an opinion by a qualified independent evaluator pursuant to this section. ~~All examiners are permitted to have reasonable access to the person for the purpose of the examination, as well as access to all relevant medical, psychological, criminal offense, and disciplinary records and reports. In the case of an indigent person who requests would like an independent evaluator expert of his own choosing, the indigent person must file and serve upon the Attorney General a motion requesting payment and costs court must determine whether the services are necessary. The Attorney General shall have ten days from the date of service to file a response to the motion. If the court determines that the services are necessary and the expert's requested compensation for the qualified independent evaluator services is reasonable, then the court must assist the person in obtaining the qualified independent evaluator expert to perform an evaluation examination or participate in the trial on the person's behalf and must approve all reasonable expenses associated with the evaluation. All evaluators are permitted to have reasonable access to the person for the purpose of the examination, as well as reasonable access to all relevant medical, psychological, criminal offense, and disciplinary records and reports. The court shall order must approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person to comply with any testing and assessments deemed necessary by the evaluator for a thorough evaluation, and compensation received in the case or for the same services from any other source.~~"

SECTION 7. Section 44-48-100(B) of the 1976 Code is amended to read:

"(B) If the person charged with a sexually violent offense has been found incompetent to stand trial and is about to be released and the person's commitment is sought pursuant to subsection (A), then the court first shall conduct a non-jury hearing, where it will hear evidence and determine whether the person committed the act or acts with which he is charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases apply, and all constitutional rights available to defendants at criminal hearings trials, except other than the right not to be tried while incompetent and the right to a jury trial, apply. After hearing evidence on this issue, the court must make specific findings on whether the person committed the act or acts with which he is charged; the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf; the extent to which the evidence could be reconstructed without the assistance of the person; and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds beyond a reasonable doubt that the person committed the act or acts with which he is charged, then the court must enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter."

SECTION 8. Section 44-48-110 of the 1976 Code is amended to read:

"Section 44-48-110. (A)(1) A person resident committed pursuant to this chapter must have an evaluation examination of his mental condition performed by a Department of Mental Health-designated evaluator within one once every year from the filing date of the initial commitment order. Thereafter, a Department of Mental Health-designated evaluator will evaluate the resident's mental condition within one year after a pending review is resolved by a filed court order indicating:

- (a) a finding of no probable cause;
- (b) a waiver by the resident; or
- (c) an order of continued commitment after a periodic review trial.

(2) The designated evaluator's report is admissible as evidence at any hearing and must be provided to the clerk of the court in the jurisdiction that committed the resident pursuant to this chapter, the Attorney General, and the solicitor who prosecuted the resident.

(B) The resident person may retain or, if the resident person is indigent and so requests, the court may appoint a qualified evaluator expert to evaluate examine the resident person, and the resident's evaluator expert must have reasonable access to all medical, psychological, criminal offense, and disciplinary, and treatment records and reports concerning the resident person.

(C) The annual report must be provided to the court which committed the person pursuant to this chapter, the Attorney General, the solicitor who prosecuted the person, and the multidisciplinary team. After the designated evaluator's report is filed, the court must conduct an annual hearing to review the resident's status of the committed person, unless the resident waives the hearing in writing. The committed person is not prohibited from petitioning the court for release at this hearing.

(D) The Director of the Department of Mental Health must provide the resident committed person with an annual written notice of the resident's person's right to petition the court for release without the Department of Mental Health's authorization and over the director's objection; the notice must contain a waiver of rights form, within one year of the last periodic review order or waiver of rights. The department director must forward the designated evaluator's report with the notice and waiver form to the clerk of court in the jurisdiction that committed the resident pursuant to this chapter, the Attorney General, and the solicitor who prosecuted the resident with the annual report.

(E) The resident committed person has a right to have an attorney represent him at the periodic review hearing, but the resident committed person is not entitled to be present at the hearing. The resident may only be present at the hearing upon issuance of a transport order received by the Department of Mental Health within not less than fifteen days of the hearing date. The Department of Mental Health-designated evaluator will only be required to be present at the hearing if subpoenaed by the resident's attorney in accordance with the South Carolina Rules of Civil Procedure.

(F) If the court determines that probable cause exists to believe that the resident's person's mental abnormality or personality disorder has so changed that the resident person is safe to be at large and, if released, is not likely to commit acts of sexual violence, the court must schedule a trial on the issue. At the trial, the resident committed person is entitled to be present and is entitled to the benefit of all constitutional protections that were afforded the resident person at the initial commitment proceeding. The Attorney General must notify the victim of all proceedings. The Attorney General must represent the State and has the right to have the resident committed person evaluated by a qualified evaluator experts chosen by the State. The trial must be before a jury if requested by either the resident person, the Attorney General, or the solicitor. The resident committed person also has the right to have a qualified evaluator experts evaluate the resident person on the resident's person's behalf, and the court must appoint an evaluator expert if the resident person is indigent and requests the appointment. The burden of proof at the trial is upon the State to prove beyond a reasonable doubt that the resident's committed person's mental abnormality or personality disorder remains such that the resident person is not safe to be at large and, if released, is likely to engage in acts of sexual violence."

SECTION 9. Chapter 48, Title 44 of the 1976 Code is amended by adding:

"Section 44-48-115. (A) A resident committed to the South Carolina Sexually Violent Predator Treatment Unit shall have the right to challenge the commitment and subsequent periodic reviews based on the ineffective assistance of counsel during the resident's commitment trial or periodic review proceedings.

(B) Petitions shall be filed in the original jurisdiction of the South Carolina Supreme Court under the South Carolina Appellate Court Rules within thirty days of the date that any appeals from the commitment or periodic review proceedings are final. Upon receipt of the petition, the Clerk of Court of the Supreme Court shall issue an order designating a circuit court or appellate court judge as a referee to

make appropriate findings of fact and conclusions of law and shall report the findings and conclusions to the Supreme Court. The designated judge shall have the statewide authority to issue orders as necessary.

(C) Except as provided in this chapter, the South Carolina Rules of Civil Procedure and the South Carolina Rules of Evidence apply to cases filed pursuant to this section, in evidentiary hearings before the designated hearing judge.

(D) The named respondent shall be the Department of Mental Health. A copy of the petition shall be served on the Department of Mental Health and the South Carolina Attorney General's Office.

(E) Upon the filing of a petition alleging that the resident is indigent and desires appointed counsel, the designated judge shall appoint an attorney to represent the resident. Counsel shall be appointed from the contract attorney list of post-conviction counsel maintained by the South Carolina Commission on Indigent Defense, or such other list of attorneys as the Executive Director of the South Carolina Commission on Indigent Defense shall designate to the court. If no attorney is available from this list, then the designated circuit court judge shall appoint an attorney from the Appointment of Lawyers for Indigents. The designated judge shall not appoint an attorney who previously represented the resident in any prior criminal proceedings underlying the commitment or state post-conviction relief proceedings or appeals therefrom, in the original sexually violent predator civil commitment proceeding or appeal therefrom, or in any previous or present periodic reviews or appeals therefrom.

(F) The designated judge shall authorize by court order to the particular county clerks of court the disclosure of any pleadings, evidence, transcript, or other document filed in any circuit court or appellate court clerk's office of this State in any case in which the resident was a defendant, respondent, or party to a criminal action or an action under the Sexually Violent Predator Act that has been ordered sealed. These materials shall be unsealed for the limited purpose of providing items to appointed counsel for the resident, to the resident himself if he elects to proceed pro se, and the Department of Mental Health and its attorneys.

(G) Regardless of whether the resident indicates that he has served the Department of Mental Health, the Clerk of Court of the South Carolina Supreme Court shall forward the filed petition and all accompanying papers to the Department of Mental Health's Office of General Counsel as the agent for service of process for the Department of Mental Health, and a copy to the Attorney General's office. The Department of Mental Health, through the Attorney General's Office acting as its representative, shall file its responsive pleading within thirty days of receipt of the order appointing counsel, or within thirty days of the receipt of the petition if counsel is retained, or receipt of the petition if the resident is proceeding pro se without a request for counsel at the time of the filing.

(H) In the event that a habeas petition alleging ineffective assistance of counsel claims relating to the resident's commitment or periodic review is filed before the conclusion of the resident's appeal therefrom, the Clerk of the Supreme Court shall dismiss the petition without prejudice and without requiring a response from the Department of Mental Health.

(I) Within thirty days of assignment, the designated judge shall issue a scheduling order, including a discovery schedule and shall set a hearing within not more than one hundred eighty days from the filing of the petition. A final report to the Supreme Court shall be submitted within thirty days from the conclusion of the hearing, including findings of fact and conclusions of law pursuant to the standard set forth in In the Matter of the Treatment and Care of Chapman, 419 S.C. 172, 796 S.E.2d 843 (2017). This does not preclude the designated judge from recommending to the Supreme Court that the petition be denied on the basis of the pleadings without a hearing when appropriate upon motion by the Department of Mental Health.

(J) Upon receipt of the findings and conclusions of the designated judge to the Supreme Court by the designated judge, the Clerk of the Supreme Court may set forth an appropriate briefing schedule. The clerk may consider expediting the matter to determine whether the writ of habeas corpus should be granted and the appropriate relief therefrom. The court may also issue, as appropriate, orders relating to

whether intervening and on-going statutory status review proceedings or appeals therefrom are affected in any manner by the habeas corpus actions in its original jurisdiction."

SECTION 10. Section 44-48-120(B) of the 1976 Code is amended to read:

"(B) The court, upon receipt of the petition for release filed pursuant to Section 44-48-120(A), must order a hearing within thirty days unless the Attorney General, with notice to the resident, requests an examination by a qualified evaluator expert as to whether the resident's petitioner's mental abnormality or personality disorder has so changed that the resident petitioner is safe to be at large and, if released, is not likely to commit acts of sexual violence, or the resident petitioner or the Attorney General requests a trial before a jury. The Attorney General must represent the State and has the right to have the resident petitioner examined by a qualified evaluator experts chosen by the State. If the petition is filed with the authorization of the Department of Mental Health provided by this section, then the Department of Mental Health-designated evaluator shall appear as a witness at the hearing or trial. If the Attorney General's evaluator determines that the resident still meets the criteria for confinement as a sexually violent predator, then the resident may seek another evaluation at his own expense. All evaluators are permitted to have reasonable access to the person for the purpose of the examination, as well as reasonable access to all relevant medical, psychological, criminal offense, and disciplinary records and reports, and the court shall order the person to comply with any testing and assessments deemed necessary by an evaluator. ~~Attorney General retains a qualified expert who concludes that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and, if released, is likely to commit acts of sexual violence, the petitioner may retain a qualified expert of his own choosing to perform a subsequent examination. In the case of an indigent petitioner who would like an expert of his own choosing, the court must determine whether the services are necessary. If the court determines that the services are necessary and the expert's requested compensation for the services is reasonable, the court must assist the petitioner in obtaining the expert to perform an examination or participate in the hearing or trial on the petitioner's behalf. The court must approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the petitioner, and compensation received in the case or for the same services from any other source. The burden of proof is upon the Attorney General to show beyond a reasonable doubt that the resident's petitioner's mental abnormality or personality disorder remains such that the resident petitioner is not safe to be at large and, that if released, is likely to commit acts of sexual violence. All cases pursuant to this chapter shall be given priority status for the purposes of scheduling any hearings and trials.~~"

SECTION 11. Section 44-48-150 of the 1976 Code is amended to read:

"Section 44-48-150. Psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records, or victim impact statements which have been submitted to the court or admitted into evidence under this chapter must be part of the record, but must be sealed and opened only on order of the court. Nothing in this section prohibits the release of records to the Attorney General and counsel of record for the person."

SECTION 12. Section 24-21-32(C) of the 1976 Code is amended to read:

"(C) The individual terms and conditions of reentry supervision shall be developed by the department using an evidence-based assessment of the inmate's needs and risks. An inmate placed on reentry supervision must be supervised by a probation agent of the department. The department shall promulgate regulations for the terms and conditions of reentry supervision. Until such time as regulations are promulgated, the terms and conditions shall be based on guidelines developed by the director. However, if, under the Sexually Violent Predator Act, the multidisciplinary team finds probable cause to believe that an inmate is a sexually violent predator pursuant to Section 44-48-50, then the inmate is not eligible for the supervised re-entry program until resolution of the proceedings pursuant to the Sexually Violent Predator Act."

SECTION 13. This act takes effect upon approval by the Governor.

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APPENDIX B. DOCUMENTS RELATED TO REQUESTS 2 AND 3

Code of Laws of South Carolina 1976 Annotated

Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 1. Definitions and General Matter

Code 1976 § 44-23-10

§ 44-23-10. Definitions.

Effective: June 3, 2016

[Currentness](#)

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.

Credits

HISTORY: 1962 Code § 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 § 1; 1986 Act No. 539, § 3(1)(G); [1993 Act No. 181, § 1083](#); [2008 Act No. 266, § 7, eff June 4, 2008](#); [2011 Act No. 47, § 4, eff June 7, 2011](#); [2016 Act No. 225 \(H.3952\), § 1, eff June 3, 2016](#).

[Notes of Decisions \(4\)](#)

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Code 1976 § 44-23-10, SC ST § 44-23-10

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Code of Laws of South Carolina 1976 Annotated

Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 1. Definitions and General Matter

Code 1976 § 44-23-20

§ 44-23-20. Inapplicability to Whitten Center.

Currentness

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.

Credits

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

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Code 1976 § 44-23-20, SC ST § 44-23-20

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Code of Laws of South Carolina 1976 Annotated

Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 1. Definitions and General Matter

Code 1976 § 44-23-40

§ 44-23-40. Appeal to court from rules and regulations.

Currentness

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.

Credits

HISTORY: 1962 Code § 32-914; 1952 Code § 32-985; 1942 Code § 6223; 1932 Code § 6223; Civ. C. '22 § 5074; Civ. C. '12 § 3355; Civ. C. '02 § 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.

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Code of Laws of South Carolina 1976 Annotated

Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 3. Detention, Confinement, and Transfer of Confined Persons

Code 1976 § 44-23-210

§ 44-23-210. Transfer of confined persons to or between mental health or intellectual disability facility.

Effective: June 7, 2011

[Currentness](#)

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.

Credits

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

[Notes of Decisions \(3\)](#)

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Code 1976 § 44-23-210, SC ST § 44-23-210

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Code of Laws of South Carolina 1976 Annotated

Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 3. Detention, Confinement, and Transfer of Confined Persons

Code 1976 § 44-23-220

§ 44-23-220. Admission of persons in jail.

Effective: June 7, 2011

[Currentness](#)

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.

Credits

HISTORY: 1962 Code § 32-975; 1974 (58) 2642; [1993 Act No. 181, § 1085](#); [2011 Act No. 47, § 5, eff June 7, 2011](#).

[Notes of Decisions \(1\)](#)

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Code 1976 § 44-23-220, SC ST § 44-23-220

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Code of Laws of South Carolina 1976 Annotated

Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 3. Detention, Confinement, and Transfer of Confined Persons

Code 1976 § 44-23-240

§ 44-23-240. Causing unwarranted confinement.

Effective: June 7, 2011

[Currentness](#)

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.

Credits

HISTORY: 1962 Code § 32-916; 1952 (47) 2042; 1974 (58) 2642; [2011 Act No. 47, § 5, eff June 7, 2011.](#)

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Code 1976 § 44-23-240, SC ST § 44-23-240

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Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 3. Detention, Confinement, and Transfer of Confined Persons

Code 1976 § 44-23-250

§ 44-23-250. Signature of director of state mental health facility defined.

Effective: June 7, 2011

[Currentness](#)

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.

Credits

HISTORY: 1962 Code § 32-916.1; 1967 (55) 317; [2008 Act No. 266, § 9, eff June 4, 2008](#); [2011 Act No. 47, § 5, eff June 7, 2011](#).

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Code 1976 § 44-23-250, SC ST § 44-23-250

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Code of Laws of South Carolina 1976 Annotated

Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 5. Fitness to Stand Trial

Code 1976 § 44-23-410

§ 44-23-410. Determining fitness to stand trial; time for conducting examination; extension; independent examination; competency distinguished.

Effective: June 7, 2011

[Currentness](#)

(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.

Credits

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

[Notes of Decisions \(32\)](#)

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Code 1976 § 44-23-410, SC ST § 44-23-410

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Code of Laws of South Carolina 1976 Annotated

Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 5. Fitness to Stand Trial

Code 1976 § 44-23-420

§ 44-23-420. Designated examiners' report.

Effective: June 7, 2011

[Currentness](#)

(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](#).

Credits

HISTORY: 1962 Code § 32-978; 1974 (58) 2642; [2006 Act No. 400, § 2, eff September 29, 2006](#); [2011 Act No. 47, § 5, eff June 7, 2011](#).

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Code 1976 § 44-23-420, SC ST § 44-23-420

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Code of Laws of South Carolina 1976 Annotated

Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 5. Fitness to Stand Trial

Code 1976 § 44-23-430

§ 44-23-430. Hearing on fitness to stand trial; effect of outcome.

Effective: June 7, 2011

[Currentness](#)

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.

Credits

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

[Notes of Decisions \(2\)](#)

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Code 1976 § 44-23-430, SC ST § 44-23-430

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Code of Laws of South Carolina 1976 Annotated

Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 5. Fitness to Stand Trial

Code 1976 § 44-23-440

§ 44-23-440. Finding of unfitness to stand trial shall not preclude defense on merits.

Effective: June 7, 2011

[Currentness](#)

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.

Credits

HISTORY: 1962 Code § 32-981; 1974 (58) 2642; 1977 Act No. 99, § 17; [2011 Act No. 47, § 5, eff June 7, 2011](#).

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Code 1976 § 44-23-440, SC ST § 44-23-440

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Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 5. Fitness to Stand Trial

Code 1976 § 44-23-450

§ 44-23-450. Reexamination of finding of unfitness.

Effective: June 7, 2011

[Currentness](#)

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.

Credits

HISTORY: 1962 Code § 32-982; 1974 (58) 2642; 1977 Act No. 99, § 17; [2011 Act No. 47, § 5, eff June 7, 2011](#).

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Code 1976 § 44-23-450, SC ST § 44-23-450

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Code of Laws of South Carolina 1976 Annotated

Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 5. Fitness to Stand Trial

Code 1976 § 44-23-460

§ 44-23-460. Procedure when superintendent believes person charged with crime no longer requires hospitalization.

Effective: June 7, 2011

[Currentness](#)

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.

Credits

HISTORY: 1962 Code § 32-983; 1974 (58) 2642; 1977 Act No. 99, § 17; [2011 Act No. 47, § 5, eff June 7, 2011](#).

[Notes of Decisions \(1\)](#)


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Code 1976 § 44-23-460, SC ST § 44-23-460

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Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability
Article 11. Treatment, Rights, Privileges, and Expenses of Patients Generally

Code 1976 § 44-23-1080

§ 44-23-1080. Patients and prisoners denied access to alcoholic beverages, firearms, dangerous weapons, and controlled substances.

Currentness

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.

Credits

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

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Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 11. Treatment, Rights, Privileges, and Expenses of Patients Generally

Code 1976 § 44-23-1100

§ 44-23-1100. Disclosure of copies of completed forms retained by probate judges.

Currentness

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](#).

Credits

HISTORY: 1962 Code § 32-1023; 1952 (47) 2042; 1958 (50) 1634; [2000 Act No. 253, § 10](#).

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Code 1976 § 44-23-1100, SC ST § 44-23-1100

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Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 11. Treatment, Rights, Privileges, and Expenses of Patients Generally

Code 1976 § 44-23-1110

§ 44-23-1110. Charges for maintenance, care, and services.

Currentness

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.

Credits

HISTORY: 1962 Code § 32-1026; 1952 Code § 32-954; 1942 Code § 6223; 1932 Code § 6223; Civ. C. '22 § 5074; Civ. C. '12 § 3355; Civ. C. '02 § 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.

Notes of Decisions (3)

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Code of Laws of South Carolina 1976 Annotated

Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 11. Treatment, Rights, Privileges, and Expenses of Patients Generally

Code 1976 § 44-23-1120

§ 44-23-1120. Liability of estate of deceased patient or trainee.

Currentness

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.

Credits

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

Notes of Decisions (7)

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Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 11. Treatment, Rights, Privileges, and Expenses of Patients Generally

Code 1976 § 44-23-1130

§ 44-23-1130. Contracts for care and treatment.

Currentness

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.

Credits

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

Notes of Decisions (1)

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Code of Laws of South Carolina 1976 Annotated

Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 11. Treatment, Rights, Privileges, and Expenses of Patients Generally

Code 1976 § 44-23-1140

§ 44-23-1140. Lien for care and treatment; filing statement; limitation of action for enforcement.

Currentness

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.

Credits

HISTORY: 1962 Code § 32-1029; 1952 (47) 2042; 1953 (48) 504; 1954 (48) 1732; 1956 (49) 1604; [1997 Act No. 34, § 1](#).

[Notes of Decisions \(4\)](#)

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Code of Laws of South Carolina 1976 Annotated

Title 44. Health

Chapter 23. Provisions Applicable to Both Mentally Ill Persons and Persons with Intellectual Disability

Article 11. Treatment, Rights, Privileges, and Expenses of Patients Generally

Code 1976 § 44-23-1150

§ 44-23-1150. Sexual misconduct with an inmate, patient, or offender.

Currentness

(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 than five hundred dollars or imprisoned for not more than six months, or both.

Credits

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

[Notes of Decisions \(5\)](#)

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APPENDIX C. DOCUMENTS RELATED TO REQUEST 4

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act

Code 1976 T. 15, Ch. 78, Refs & Annos
[Currentness](#)

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Code 1976 T. 15, Ch. 78, Refs & Annos, SC ST T. 15, Ch. 78, Refs & Annos

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Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-10

§ 15-78-10. Short title.

Currentness

This chapter may be cited as the “South Carolina Tort Claims Act”.

Credits

HISTORY: 1986 Act No. 463, § 1.

Notes of Decisions (25)


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Code 1976 § 15-78-10, SC ST § 15-78-10

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Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-20

§ 15-78-20. Legislative findings; declaration of public policy; extent of, and construction of, waiver of immunity.

Currentness

(a) The General Assembly finds that while a private entrepreneur may be readily held liable for negligence of his employees within the chosen ambit of his activity, the area within which government has the power to act for the public good has been without limit and, therefore, government did not have the duty to do everything which might have been done. The General Assembly further finds that each governmental entity has financial limitations within which it must exercise authorized power and discretion in determining the extent and nature of its activities. Thus, while total immunity from liability on the part of the government is not desirable, see *McCall v. Batson*, neither should the government be subject to unlimited nor unqualified liability for its actions. The General Assembly recognizes the potential problems and hardships each governmental entity may face being subjected to unlimited and unqualified liability for its actions. Additionally, the General Assembly recognizes the impossibility of insuring for acts retrospectively. The General Assembly seeks an orderly transition to the recognition of individuals' rights against the tortious sovereign as defined herein. Consequently, it is declared to be the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein. It is further declared to be the public policy of the State of South Carolina that to insure an orderly transition from sovereign immunity to qualified and limited liability that the General Assembly intends to provide for liability on the part of the State and its political subdivisions only from July 1, 1986, forward in prospective fashion. No governmental entity which was not insured at the time of the injury for which compensation is sought is liable under this chapter and those which were insured are liable only to the extent provided herein. Liability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty.

(b) The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter. The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein. All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved. The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b).

(c)(i) As to those causes of action that arise or accrue prior to the effective date of this act, the General Assembly reinstates sovereign immunity on the part of the State, its political subdivisions and employees, while acting within the scope of official duty provided that sovereign immunity will not bar recovery in any cause of action arising or accruing on or before the effective date of this act if the defendant maintained liability insurance coverage.

(ii) In such cases involving governmental health care facilities, as defined in § 15-78-30(j), recovery shall not exceed the limits of the liability insurance coverage up to a maximum recovery of five hundred thousand dollars.

(iii) In all other such cases recovery shall not exceed the limits of the liability insurance coverage.

(d) Nothing in this chapter affects liability based on contract nor does it affect the power of the State or its political subdivisions to contract.

(e) Nothing in this chapter is construed as a waiver of the state's or political subdivision's immunity from suit in federal court under the Eleventh Amendment to the Constitution of the United States nor as consent to be sued in any state court beyond the boundaries of the State of South Carolina.

(f) The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.

(g) The General Assembly recognizes the competing interests of either providing physicians and dentists qualified immunity under the provisions of the South Carolina Tort Claims Act or continuing unqualified liability for medical malpractice actions brought against governmentally employed physicians or dentists. While patients deserve accountable and competent health care, regardless of the public or private character of the provider, governmental entities, in order to attract qualified physicians and dentists, must be able to offer an affordable compensation and employment package, including liability insurance. The General Assembly, in amending this chapter, intends to provide an orderly transition from noninclusion to inclusion of physicians and dentists under the provisions of this chapter. Additionally, the liability limits, and hence mandated insurance coverage, of governmental entities for acts of physicians or dentists, acting within the scope of their profession, are set somewhat higher than those provided for other types of governmental liability. These higher limits and mandated coverages are recognition by the General Assembly of significantly higher damages in cases of medical malpractice. To this end, inclusion of physicians and dentists within this chapter has been delayed until January 1, 1989, when an affordable program of group liability insurance will be instituted.

Credits

HISTORY: 1986 Act No. 463, § 1; 1987 Act No. 7, § 1; 1988 Act No. 352, § 2.

[Notes of Decisions \(47\)](#)

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Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-30

§ 15-78-30. Definitions.

Effective: April 16, 2008

[Currentness](#)

(a) “Agency” means the individual office, agency, authority, department, commission, board, division, instrumentality, or institution, including a state-supported governmental health care facility, school, college, university, or technical college, which employs the employee whose act or omission gives rise to a claim under this chapter.

(b) “Claim” means any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty.

(c) Prior to January 1, 1989, “employee” means any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty, whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession.

On or after January 1, 1989, “employee” means any officer, employee, agent, or court appointed representative of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty including, but not limited to, technical experts whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession, with respect to any action or claim which involved services for which the physician or dentist was paid, should have been paid, or expected to be paid at the time of the rendering of the services from a source other than the salary appropriated by the governmental entity or fees received from any practice plan authorized by the employer whether or not the practice plan is incorporated and registered with the Secretary of State.

(d) “Governmental entity” means the State and its political subdivisions.

(e) “State” means the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, including the South Carolina Protection and Advocacy System for the Handicapped, Inc., and institutions, including state-supported governmental health care facilities, schools, colleges, universities, and technical colleges.

(f) “Loss” means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

(g) “Occurrence” means an unfolding sequence of events which proximately flow from a single act of negligence.

(h) “Political subdivision” means the counties, municipalities, school districts, a regional transportation authority established pursuant to Chapter 25 of Title 58, and an operator as defined in item (8) of § 58-25-20 which provides public transportation on behalf of a regional transportation authority, and special purpose districts of the State and any agency, governmental health care facility, department, or subdivision thereof.

(i) “Scope of official duty” or “scope of state employment” means (1) acting in and about the official business of a governmental entity and (2) performing official duties.

(j) “Governmental health care facility” means one which is operated by the State or a political subdivision through a governing board appointed or elected pursuant to statute or ordinance and which is tax-exempt under state and federal laws as a governmental entity and from which no part of its net income from its operation accrues to the benefit of any individual or nongovernmental entity. Health care facility includes any facility as defined in Title 44, S. C. Code Ann. for the provision of mental or physical care to individuals, whether or not it is required to be licensed under those provisions.

Credits

HISTORY: 1986 Act No. 463, § 1; 1988 Act No. 352, §§ 3, 4; 1990 Act No. 351, § 1; 1994 Act No. 380, § 2; 1996 Act No. 271, § 1; 2008 Act No. 199, § 2, eff April 16, 2008.

[Notes of Decisions \(23\)](#)

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Proposed Legislation

[Code of Laws of South Carolina 1976 Annotated](#)
[Title 15. Civil Remedies and Procedures](#)
[Chapter 78. South Carolina Tort Claims Act \(Refs & Annos\)](#)

Code 1976 § 15-78-40

§ 15-78-40. Tort liability of State, agency, political subdivision, or governmental entity, generally.

[Currentness](#)

The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.

Credits

HISTORY: 1986 Act No. 463, § 1.

[Notes of Decisions \(45\)](#)

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Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-50

§ 15-78-50. Right of injured person to file claim; non-liability of governmental entity where employee would not be liable if a private person; injunctions against governmental entities.

[Currentness](#)

(a) Any person who may suffer a loss proximately caused by a tort of the State, an agency, a political subdivision, or a governmental entity, and its employee acting within the scope of his official duty may file a claim as hereinafter provided.

(b) In no case is a governmental entity liable for a tort of an employee where that employee, if a private person, would not be liable under the laws of this State.

(c) Nothing herein shall affect the power of a court of equity at the suit of a party complainant to enjoin unlawful acts committed by governmental entities or mandate lawful action by governmental entities.

Credits

HISTORY: 1986 Act No. 463, § 1.

[Notes of Decisions \(3\)](#)


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Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-60

§ 15-78-60. Exceptions to waiver of immunity.

Effective: March 30, 2010

[Currentness](#)

The governmental entity is not liable for a loss resulting from:

- (1) legislative, judicial, or quasi-judicial action or inaction;
- (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
- (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;
- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
- (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
- (6) civil disobedience, riot, insurrection, or rebellion or the failure to provide the method of providing police or fire protection;
- (7) a nuisance;
- (8) snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions unless the snow or ice thereon is affirmatively caused by a negligent act of the employee;
- (9) entry upon any property where the entry is expressly or impliedly authorized by law;
- (10) natural conditions of unimproved property of the governmental entity, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for the property within a reasonable time after actual or constructive notice of the defect or condition;

(11) assessment or collection of taxes or special assessments or enforcement of tax laws;

(12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner;

(13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;

(14) any claim covered by the South Carolina Workers' Compensation Act, except claims by or on behalf of an injured employee to recover damages from any person other than the employer, the South Carolina Unemployment Compensation Act, or the South Carolina State Employee's Grievance Act;

(15) absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier unless the absence, condition, or malfunction is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice. Governmental entities are not liable for the removal or destruction of signs, signals, warning devices, guardrails, or median barriers by third parties except on failure of the political subdivision to correct them within a reasonable time after actual or constructive notice. Nothing in this item gives rise to liability arising from a failure of any governmental entity to initially place any of the above signs, signals, warning devices, guardrails, or median barriers when the failure is the result of a discretionary act of the governmental entity. The signs, signals, warning devices, guardrails, or median barriers referred to in this item are those used in connection with hazards normally connected with the use of public ways and do not apply to the duty to warn of special conditions such as excavations, dredging, or public way construction. Governmental entities are not liable for the design of highways and other public ways. Governmental entities are not liable for loss on public ways under construction when the entity is protected by an indemnity bond. Governmental entities responsible for maintaining highways, roads, streets, causeways, bridges, or other public ways are not liable for loss arising out of a defect or a condition in, on, under, or overhanging a highway, road, street, causeway, bridge, or other public way caused by a third party unless the defect or condition is not corrected by the particular governmental entity responsible for the maintenance within a reasonable time after actual or constructive notice;

(16) maintenance, security, or supervision of any public property, intended or permitted to be used as a park, playground, or open area for recreational purposes, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for maintenance, security, or supervision within a reasonable time after actual notice of the defect or condition;

(17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude;

(18) imposition or establishment of a quarantine by a governmental entity, whether the quarantine relates to persons or property;

(19) emergency preparedness activities and activities of the South Carolina National Guard and South Carolina State Guard while engaged in state or federal training or duty. This exemption does not apply to vehicular accidents;

- (20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons;
- (21) the decision to or implementation of release, discharge, parole, or furlough of any persons in the custody of any governmental entity, including but not limited to a prisoner, inmate, juvenile, patient, or client or the escape of these persons;
- (22) termination or reduction of benefits under a public assistance program;
- (23) institution or prosecution of any judicial or administrative proceeding;
- (24) holding or conduct of elections;
- (25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner;
- (26) failure to supervise or control areas open for public hunting or activities thereon. Failure to control, maintain, and/or supervise the use of and activities in, on, and around public boat ramps except within a reasonable time after actual notice of the defect or condition. Failure to maintain navigational markers, except within a reasonable time after actual notice of the defect or condition.
- (27) solicitations on streets and highways as authorized by the provisions of [Section 5-27-910](#).
- (28) Notification of any public school student's parent, legal guardian, or other person with whom a public school student resides of the student's suspected use of alcohol, controlled substance, prescription or nonprescription drugs by any public school administrator, principal, counselor, or teacher if such notification is made in good faith.
- (29) acts or omissions of members of the state and county athletic commissions or ringside physicians acting within the scope of their official duties pursuant to Chapter 7 of Title 52.
- (30) acts or omissions of members of local foster care review boards acting within the scope of their official duties pursuant to Subarticle 4, Article 13, Chapter 7 of Title 20. However, the member shall act in good faith, his conduct may not constitute gross negligence, recklessness, wilfulness, or wantonness, and he must have participated in a training program established by the state foster care review board system.
- (31) acts or omissions of employees and volunteers of the South Carolina Protection and Advocacy System for the Handicapped acting within the scope of their official duties pursuant to Article 5, Chapter 33 of Title 43, when such acts or omissions are done or made in good faith, and do not constitute gross negligence, recklessness, wilfulness, or wantonness.
- (32) a pre-occupancy housing inspection contracted for by the South Carolina Department of Employment and Workforce pursuant to [Section 46-43-40](#).

(33) the performance of any duty related to the service of members of the Judicial Merit Selection Commission or the Citizens Committees on Judicial Selection.

(34) the performance of any duty related to the service of the members of the Tobacco Community Development Board.

(35) the failure of a library's or media arts center's governing board to adopt policies as provided in [Section 10-1-205](#).

(36) acts or omissions by a special state constable who is appointed pursuant to [Section 23-7-10](#) and acting within the scope of his official duty under conditions of a national emergency or of a serious and immediate risk to the physical security of an energy facility within the special state constable's jurisdiction as provided in [Section 23-7-40](#).

(37) the performance of any duty related to the service of the members of the Tobacco Settlement Revenue Management authority.

(38) conduct of a director appointed pursuant to [Section 58-31-20](#) giving rise to a lawsuit under [Section 58-31-57](#).

(39) the grant or denial by a governing body of a county or municipality as provided in [Section 23-35-175](#) of an application to extend a Fireworks Prohibited Zone beyond the subject property for which a Discharge of Fireworks Prohibited Agreement has been filed.

(40) an injury a student may sustain as a result of self-monitoring or self-administering medications or for an injury that a student may sustain from taking or using medications or self-monitoring devices for which the student does not have a prescription or does not have authorization by the school district.

Credits


HISTORY: 1986 Act No. 463, § 1; 1988 Act No. 352, §§ 5, 6; 1988 Act No. 373, § 2; 1988 Act No. 664; 1988 Act No. 675, § 1; 1989 Act No. 132, § 2; 1990 Act No. 351, § 2; [1996 Act No. 386, § 3](#); [1997 Act No. 35, § 6](#); [1999 Act No. 77, § 4](#); [2000 Act No. 362, § 1](#); [2000 Act No. 387, Part II, § 69A.5](#); [2000 Act No. 387, Part II, § 97B](#); [2000 Act No. 407, § 3](#); [2005 Act No. 6, § 2, eff January 13, 2005](#); [2005 Act No. 81, § 2, eff May 26, 2005](#); [2005 Act No. 137, § 2, eff May 25, 2005](#).

[Notes of Decisions \(233\)](#)

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Code 1976 § 15-78-60, SC ST § 15-78-60

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 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-70

§ 15-78-70. Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.

Currentness

(a) This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).

(b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

(c) Prior to January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant. The provisions of this section may in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession.

On or after January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant. The provisions of this section in no way shall limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession, with respect to any action or claim brought hereunder which involved services for which the physician or dentist was paid, should have been paid, or expected to be paid at the time of the rendering of the services from any source other than the salary appropriated by the governmental entity or fees received from any practice plan authorized by the employer whether or not the practice plan is incorporated and registered with the Secretary of State.

(d) A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence.

(e) Nothing in this chapter may be construed to give a director appointed pursuant to [Section 58-31-20](#) immunity from suit and liability as set forth in [Section 58-31-57](#). The State Fiscal Accountability Authority, Insurance Reserve Fund, is prohibited from

providing insurance coverage for this individual liability; however, nothing shall prevent the Public Service Authority or its directors from obtaining insurance coverage from any other source.

Credits

HISTORY: 1986 Act No. 463, § 1; 1988 Act No. 352, § 7; [1994 Act No. 380, § 3](#); [2005 Act No. 137, § 3](#), eff May 25, 2005.

[Notes of Decisions \(33\)](#)


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Code 1976 § 15-78-70, SC ST § 15-78-70

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Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-80

§ 15-78-80. Filing of verified claim; handling and disposition of claims; requirement that agencies and political subdivisions cooperate with State Fiscal Accountability Authority.

Currentness

(a) A verified claim for damages under this chapter, setting forth the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, and the amount of the loss sustained may be filed:

(1) in cases against the State, with the State Fiscal Accountability Authority, or with the agency employing an employee whose alleged act or omission gave rise to the claim;

(2) where the claim is against a political subdivision, with the political subdivision employing an employee whose alleged act or omission gave rise to the claim;

(3) where the identification of the proper defendant is in doubt, with the Attorney General.

(b) Each agency and political subdivision must designate an employee or office to accept the filing of the claims.

(c) Filing may be accomplished by receipt of certified mailing of the claims or by compliance with the provisions of law relating to service of process.

(d) The verified claim may be received by the State Fiscal Accountability Authority or the appropriate agency or political subdivision. If filed, the claim must be received within one year after the loss was or should have been discovered.

(e) In all cases in which a claim is filed, the State Fiscal Accountability Authority or political subdivision has one hundred eighty days from the date of filing of the claim in which to determine whether the claim should be allowed or disallowed. Failure to notify the claimant of action upon the claim within one hundred eighty days from the date of filing of the claim is considered a disallowance of the claim.

(f) The handling and disposition of claims filed under this chapter are not subject to the provisions of Article 3, Chapter 23 of Title 1.

(g) In all cases, where insurance is provided by the State Fiscal Accountability Authority, the agency or political subdivision involved must cooperate with the State Fiscal Accountability Authority in the investigation and handling of any claim.

Credits

HISTORY: 1986 Act No. 463, § 1.

[Notes of Decisions \(13\)](#)

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Code 1976 § 15-78-80, SC ST § 15-78-80

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Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-90

§ 15-78-90. Settlement of claims and actions; institution of action where claim has or has not been filed.

Currentness

(a) The State Fiscal Accountability Authority, or the political subdivision where it has not purchased insurance from the State Fiscal Accountability Authority, may adjust, compromise, settle, or allow any claim or settle or compromise any action.

(b) Whether or not the claim is filed, the claimant is entitled to institute an action against the appropriate agency or political subdivision. Provided, however, if a claimant files a claim, he may not institute an action until after the occurrence of the earliest of one of the following three events: (1) the passage of one hundred eighty days from the filing of the claim with the governmental entity, (2) the governmental entity's disallowance of the claim, or (3) the governmental entity's rejection of a settlement offer.

Credits

HISTORY: 1986 Act No. 463, § 1.

Notes of Decisions (3)

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Code 1976 § 15-78-90, SC ST § 15-78-90

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Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-100

§ 15-78-100. When and where to institute action; requirement of special verdict specifying proportionate liability of multiple defendants.

Currentness

(a) Except as provided for in [Section 15-3-40](#), an action for damages under this chapter may be instituted at any time within two years after the loss was or should have been discovered. Provided, that if a claim for damages was filed and disallowed or rejected an action for damages filed under this chapter, based upon the same occurrence as the claim, may be instituted within three years after the loss was or should have been discovered.

(b) Jurisdiction for any action brought under this chapter is in the circuit court and brought in the county in which the act or omission occurred.

(c) In all actions brought pursuant to this chapter when an alleged joint tortfeasor is named as party defendant in addition to the governmental entity, the trier of fact must return a special verdict specifying the proportion of monetary liability of each defendant against whom liability is determined.

Credits

HISTORY: 1986 Act No. 463, § 1; 1988 Act No. 352, § 8.

[Notes of Decisions \(13\)](#)

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Proposed Legislation

[Code of Laws of South Carolina 1976 Annotated](#)
[Title 15. Civil Remedies and Procedures](#)
[Chapter 78. South Carolina Tort Claims Act \(Refs & Annos\)](#)

Code 1976 § 15-78-110

§ 15-78-110. Statute of limitations.

[Currentness](#)

Except as provided for in [Section 15-3-40](#), any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

Credits

HISTORY: 1986 Act No. 463, § 1; 1988 Act No. 352, § 9.

[Notes of Decisions \(42\)](#)

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Code 1976 § 15-78-110, SC ST § 15-78-110

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KeyCite Red Flag - Severe Negative Treatment

Unconstitutional or Preempted/Recognized as Repealed by Implication [Dykema v. Carolina Emergency Physicians, P.C.](#), S.C., Mar. 04, 2002



KeyCite Yellow Flag - Negative Treatment/Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-120

§ 15-78-120. Limitation on liability; prohibition against recovery of punitive or exemplary damages or prejudgment interest; signature of attorney on pleadings, motions, or other papers.

[Currentness](#)

(a) For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits:

(1) Except as provided in Section 15-78-120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.

(2) Except as provided in Section 15-78-120(a)(4), the total sum recovered hereunder arising out of a single occurrence shall not exceed six hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.

(3) No person may recover in any action or claim brought hereunder against any governmental entity and caused by the tort of any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, a sum exceeding one million two hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.

(4) The total sum recovered hereunder arising out of a single occurrence of liability of any governmental entity for any tort caused by any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, may not exceed one million two hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.

(5) The provisions of Section 15-78-120(a)(3) and (a)(4) shall in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession, with respect to any action or claim brought hereunder which involved services for which the physician or dentist was paid, should have been paid, or expected to be paid at the time of the rendering of the services from any source other than the salary appropriated by the governmental entity or fees received from any practice plan authorized by the employer whether or not the practice plan is incorporated and registered with the Secretary of State.

(b) No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment.

(c) In any claim, action, or proceeding to enforce a provision of this chapter, the signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Credits

HISTORY: 1986 Act No. 463, § 1; 1988 Act No. 352, § 10; 1994 Act No. 380, § 4; 1997 Act No. 155, Part II, §§ 55C, 55D.

[Notes of Decisions \(37\)](#)

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Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-130

§ 15-78-130. Defense of political subdivision which has not
purchased insurance through State Fiscal Accountability Authority.

Currentness

The defense for a political subdivision against an action brought pursuant to this chapter, when the political subdivision does not purchase insurance through the State Fiscal Accountability Authority, must be provided by the political subdivision or its designee.

Credits

HISTORY: 1986 Act No. 463, § 1.


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Code 1976 § 15-78-130, SC ST § 15-78-130

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Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-140

§ 15-78-140. Procurement of insurance by political subdivisions; exclusivity of remedies provided in this chapter.

Effective: July 1, 2015

[Currentness](#)

(A) The political subdivisions of this State, in regard to tort and automobile liability, property, and casualty insurance shall procure insurance to cover these risks for which immunity has been waived by: (1) the purchase of liability insurance pursuant to [Section 1-11-140](#); or (2) the purchase of liability insurance from a private carrier; or (3) self-insurance; or (4) establishing pooled self-insurance liability funds, by intergovernmental agreement, which may not be construed as transacting the business of insurance or otherwise subject to state laws regulating insurance. A pooled self-insurance liability pool is authorized to purchase specific and aggregate excess insurance. A pooled self-insurance liability fund must provide liability coverage for all employees of a political subdivision applying for participation in the fund. If the insurance is obtained other than pursuant to [Section 1-11-140](#), it must be obtained subject to the following conditions:

(1) if the political subdivision does not procure tort liability insurance pursuant to [Section 1-11-140](#), it also must procure its automobile liability and property and casualty insurance from other sources and shall not procure these coverages through the Insurance Reserve Fund;

(2) if a political subdivision procures its tort liability insurance, automobile liability insurance, or property and casualty insurance through the Insurance Reserve Fund, all liability exposures of the political subdivision as well as its property and casualty insurance must be insured with the Insurance Reserve Fund;

(3) if the political subdivision, at any time, procures its tort liability, automobile liability, property, or casualty insurance other than through the Insurance Reserve Fund and then subsequently desires to obtain this coverage with the Insurance Reserve Fund, notice of its intention to so obtain this subsequent coverage must be provided to the Insurance Reserve Fund at least ninety days prior to the beginning of the coverage with the Insurance Reserve Fund. The other lines of insurance that the political subdivision is required to procure from the fund are not required to commence until the coverage for that line of insurance expires. Any political subdivision may cancel all lines of insurance with the Insurance Reserve Fund if it gives ninety days' notice to the fund. The Insurance Reserve Fund may negotiate the insurance coverage for any political subdivision separate from the insurance coverage for other insureds;

(4) if any political subdivision cancels its insurance with the Insurance Reserve Fund, it is entitled to an appropriate refund of the premium, less reasonable administrative cost.

(B) For any claim filed under this chapter, the remedy provided in [Section 15-78-120](#) is exclusive. The immunity of the State and its political subdivisions, with regard to the seizure, execution, or encumbrance of their properties is reaffirmed.

Credits

HISTORY: 1986 Act No. 463, § 1; [1997 Act No. 155, Part II, § 55E](#); [2014 Act No. 121 \(S.22\), Pt VII, § 19.C](#), eff July 1, 2015.

[Notes of Decisions \(8\)](#)

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Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-150

§ 15-78-150. Authority of State Fiscal Accountability Authority to purchase liability insurance; funding of purchase by participating governmental entities; premiums set according to risk; development of actuarial rating system plan.

Currentness

(a) The State Fiscal Accountability Authority is authorized to purchase liability insurance.

(b) The purchase of insurance must be funded by participating governmental entities by payment of premiums as required by the State Fiscal Accountability Authority. The State Fiscal Accountability Authority in setting these premiums shall rate the policy according to the risk involved with the general class of insured entity. The State Fiscal Accountability Authority must develop an actuarial rating system plan based upon the classification of employee and the risk involved by class of employee which must be implemented by July 1, 1990.

Credits

HISTORY: 1986 Act No. 463, § 1; 1987 Act No. 123, § 2.

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Code 1976 § 15-78-150, SC ST § 15-78-150

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Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-160

§ 15-78-160. Nonliability of State Fiscal Accountability Authority where lack of insurance coverage results from agency's or political subdivision's failure to pay premium.

Currentness

If an agency or political subdivision fails to pay any required premium within sixty days from the date the premium is invoiced, the State Fiscal Accountability Authority may cancel the policy for nonpayment of premium by mailing a notice of cancellation giving not less than thirty days' notice of the cancellation to the delinquent agency or political subdivision. Prior to the termination of the insurance coverage, notice of the impending termination also must be published in a newspaper of regular circulation in the county where the insured's headquarters is located. The State Fiscal Accountability Authority is not liable for any risk or loss occurring after the effective date of the cancellation.

Credits

HISTORY: 1986 Act No. 463, § 1; [1996 Act No. 314, § 3](#).

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Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-170

§ 15-78-170. Action or claim for death of person; division of recovery.

Currentness

An action or claim for the death of a person may be brought under this chapter by the executor or administrator respectively, of the person's estate when death results from bodily injury if the bodily injury would have entitled the injured party to maintain an action or claim if death had not ensued. The provisions and limitations of this chapter are applicable to any such action or claim. Every action or claim must be for the benefit of the wife or husband and child, or children of the person whose death has been so caused and if there is no wife, husband, child, or children, then for the benefit of the parent or parents, and if there is none, then for the benefit of the heirs-at-law or the distributees of the person whose death has been so caused. Any amount recovered must be divided among the before-mentioned parties in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his estate.

Credits

HISTORY: 1986 Act No. 463, § 1.

Notes of Decisions (4)

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Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-180

§ 15-78-180. Applicability of chapter to causes of action arising before or after July 1, 1986.

Currentness

The provisions of Chapter 78 of Title 15 of the 1976 Code shall only apply to those causes of action arising or accruing after the effective date of this chapter; provided, however, the provisions of [§ 15-78-20\(c\) of the 1976 Code](#) are applicable to all causes of action arising on or before the effective date of the chapter.

Credits

HISTORY: 1986 Act No. 463, § 1.

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Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-190

§ 15-78-190. Compensation of plaintiff pursuant to underinsured
or uninsured defendant provisions of plaintiff's insurance policy.

Currentness

If the amount of the verdict or judgment is not satisfied by reason of the monetary limitations of this chapter upon recovery from the State or political subdivision thereof, the plaintiff's insurance company, subject to the underinsured and uninsured defendant provisions of the plaintiff's insurance policy, if any, shall compensate the plaintiff for the difference between the amount of the verdict or judgment and the payment by the political subdivision. If a cause of action is barred under [§ 15-78-60 of the 1976 Code](#), the plaintiff's insurance company must compensate him for his losses subject to the aforementioned provisions of his insurance policy.

Credits

HISTORY: 1986 Act No. 463, § 6.

[Notes of Decisions \(3\)](#)

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Code 1976 § 15-78-190, SC ST § 15-78-190

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KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-200

§ 15-78-200. Exclusive and sole remedy for torts committed by employee of governmental entity while acting within scope of employee's official duty.

[Currentness](#)

Notwithstanding any provision of law, this chapter, the “South Carolina Tort Claims Act”, is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty. The provisions of this chapter establish limitations on and exemptions to the liability of the governmental entity and must be liberally construed in favor of limiting the liability of the governmental entity.

Credits

HISTORY: [1997 Act No. 155, Part II, § 55B.](#)

[Notes of Decisions \(4\)](#)

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Code 1976 § 15-78-200, SC ST § 15-78-200

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KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-210

§ 15-78-210. Rights and privileges preserved.

Currentness

The provisions of Act 27 of 2005 do not affect any right, privilege, or provision of the South Carolina Tort Claims Act as contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33.

Credits

HISTORY: [2005 Act No. 27, § 13, eff March 21, 2005.](#)

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Code 1976 § 15-78-210, SC ST § 15-78-210

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KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 78. South Carolina Tort Claims Act (Refs & Annos)

Code 1976 § 15-78-220

§ 15-78-220. Rights and privileges not affected.

Currentness

The provisions of Act 32 of 2005 do not affect any right, privilege, or provision of the South Carolina Tort Claims Act as contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33.

Credits

HISTORY: 2005 Act No. 32, § 18, eff July 1, 2005.

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Code 1976 § 15-78-220, SC ST § 15-78-220

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APPENDIX D. DOCUMENTS RELATED TO REQUEST 5

South Carolina General Assembly
123rd Session, 2019-2020

A85, R106, H3602

STATUS INFORMATION

General Bill

Sponsors: Reps. Rose, Caskey and Weeks

Document Path: I:\council\bill\cc\15424vr19.docx

Introduced in the House on January 15, 2019

Introduced in the Senate on April 2, 2019

Last Amended on May 21, 2019

Passed by the General Assembly on May 21, 2019

Governor's Action: May 24, 2019, Signed

Summary: Health care decisions for unable to consent persons

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/15/2019	House	Introduced and read first time (House Journal-page 80)
1/15/2019	House	Referred to Committee on Judiciary (House Journal-page 80)
1/16/2019	House	Member(s) request name added as sponsor: Caskey
3/20/2019	House	Committee report: Favorable with amendment Judiciary (House Journal-page 45)
3/26/2019	House	Requests for debate-Rep(s). McCravy, Toole, Thayer, White, Yow, Fry, Daning, Long, Magnuson, Martin, Burns, Hiott, Chumley, Ott (House Journal-page 26)
3/27/2019	House	Member(s) request name added as sponsor: Weeks
3/27/2019	House	Requests for debate removed-Rep(s). McCravy, Ott, Toole, Thayer, Yow, Long, White, Daning, Magnuson, Burns, Martin, Hiott, Fry (House Journal-page 23)
3/27/2019	House	Amended (House Journal-page 66)
3/27/2019	House	Read second time (House Journal-page 66)
3/27/2019	House	Roll call Yeas-104 Nays-4 (House Journal-page 68)
3/28/2019	House	Read third time and sent to Senate (House Journal-page 11)
4/2/2019	Senate	Introduced and read first time (Senate Journal-page 11)
4/2/2019	Senate	Referred to Committee on Medical Affairs (Senate Journal-page 11)
4/25/2019	Senate	Committee report: Favorable Medical Affairs (Senate Journal-page 6)
5/7/2019	Senate	Amended (Senate Journal-page 61)
5/7/2019	Senate	Read second time (Senate Journal-page 61)
5/8/2019		Scrivener's error corrected
5/8/2019	Senate	Amended (Senate Journal-page 65)
5/8/2019	Senate	Read third time and returned to House with amendments (Senate Journal-page 65)
5/8/2019	Senate	Roll call Ayes-44 Nays-0 (Senate Journal-page 65)
5/9/2019	House	Senate amendment amended (House Journal-page 79)
5/9/2019	House	Returned to Senate with amendments (House Journal-page 79)
5/9/2019	Senate	Non-concurrence in House amendment (Senate Journal-page 88)
5/9/2019	House	House insists upon amendment and conference committee appointed Reps. Rose, G.M. Smith, Johnson (House Journal-page 190)
5/9/2019	Senate	Conference committee appointed Davis, Gambrell, Johnson (Senate Journal-page 89)
5/20/2019	House	Free conference powers granted (House Journal-page 56)
5/20/2019	House	Roll call Yeas-108 Nays-0 (House Journal-page 56)

5/20/2019 House Free conference committee appointed Rose, G.M. Smith, Johnson ([House Journal-page 57](#))
5/20/2019 House Free conference report adopted ([House Journal-page 57](#))
5/20/2019 House Roll call Yeas-98 Nays-0 ([House Journal-page 60](#))
5/21/2019 Senate Free conference powers granted ([Senate Journal-page 14](#))
5/21/2019 Senate Roll call Ayes-46 Nays-0 ([Senate Journal-page 14](#))
5/21/2019 Senate Free conference committee appointed Davis, Gambrell, Johnson
5/21/2019 Senate Free conference report adopted ([Senate Journal-page 14](#))
5/21/2019 Senate Roll call Ayes-40 Nays-0 ([Senate Journal-page 14](#))
5/21/2019 Senate Ordered enrolled for ratification ([Senate Journal-page 18](#))
5/22/2019 Ratified R 106
5/24/2019 Signed By Governor
6/10/2019 Effective date 05/24/19
6/10/2019 Act No. 85

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VERSIONS OF THIS BILL

[1/15/2019](#)
[3/20/2019](#)
[3/27/2019](#)
[4/25/2019](#)
[5/7/2019](#)
[5/8/2019](#)
[5/8/2019-A](#)
[5/9/2019](#)
[5/21/2019](#)

(A85, R106, H3602)

AN ACT TO AMEND SECTION 44-66-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PERSONS AUTHORIZED TO MAKE HEALTH CARE DECISIONS FOR A PATIENT WHO IS UNABLE TO CONSENT, SO AS TO ADD AN ADDITIONAL CATEGORY OF SUCH PERSONS AND FOR OTHER PURPOSES; AND TO AMEND SECTIONS 44-26-40, 44-26-50, AND 44-26-60, ALL RELATING TO HEALTH CARE DECISION MAKING FOR CLIENTS WITH INTELLECTUAL DISABILITIES OR WHO ARE MINORS, SO AS TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

Persons authorized to make health care decisions for a patient unable to consent

SECTION 1. Section 44-66-30(A) of the 1976 Code is amended to read:

“(A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in the following order of priority:

(1) a guardian appointed by the court pursuant to Article 5, Part 3 of the South Carolina Probate Code, if the decision is within the scope of the guardianship;

(2) an attorney-in-fact appointed by the patient in a durable power of attorney executed pursuant to Section 62-5-501, if the decision is within the scope of his authority;

(3) a spouse of the patient unless the spouse and the patient are separated pursuant to one of the following:

(a) entry of a pendente lite order in a divorce or separate maintenance action;

(b) formal signing of a written property or marital settlement agreement; or

(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

(4) an adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;

(5) a parent of the patient;

(6) an adult sibling of the patient, or if the patient has more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation;

(7) a grandparent of the patient, or if the patient has more than one grandparent, a majority of the grandparents who are reasonably available for consultation;

(8) any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient, or if the patient has more than one other adult relative, a majority of those other adult relatives who are reasonably available for consultation;

(9) a person given authority to make health care decisions for the patient by another statutory provision;

(10) if, after good faith efforts, the hospital or other health care facility determines that the persons listed in items (1) through (9) are unavailable to consent on behalf of the patient, a person who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes but who is not a paid caregiver or a provider of health care services to the patient. For the purposes of this item, a person with an established relationship is an adult who has exhibited special care and concern for the patient, who is generally familiar with the patient's health care views and desires, and who is willing and able to become involved in the patient's health care decisions and to act in the patient's best interest. The person with an established relationship shall sign and date a notarized acknowledgement form, provided by the hospital or other health care facility in which the patient is located, for placement in the patient's records, setting forth the nature and length of the relationship and certifying that he meets such criteria. Along with the notarized acknowledgment form, the hospital or other health care facility shall include in the patient's medical record documentation of its effort to locate persons with higher priority under this statute as required by subsection (B)."

Competency to consent to major medical treatment

SECTION 2. Section 44-26-40 of the 1976 Code is amended to read:

“Section 44-26-40. If a client resides in a facility operated by or contracted to by the department, the determination of that client's competency to consent to or refuse major medical treatment must be made pursuant to Section 44-66-20 of the Adult Health Care Consent

Act. The department shall abide by the decision of a client found competent to consent.”

Health care decisions of incompetent clients

SECTION 3. Section 44-26-50 of the 1976 Code is amended to read:

“Section 44-26-50. If the client is found incompetent to consent to or refuse major medical treatment, the decisions concerning his health care must be made pursuant to Section 44-66-30 of the Adult Health Care Consent Act. An authorized designee of the department may make a health care decision pursuant to Section 44-66-30(A)(9) of the Adult Health Care Consent Act. The person making the decision must be informed of the need for major medical treatment, alternative treatments, and the nature and implications of the proposed health care and shall consult the attending physician before making decisions. When feasible, the person making the decision shall observe or consult with the client found to be incompetent.”

Health care decisions of minor clients

SECTION 4. Section 44-26-60(C) of the 1976 Code is amended to read:

“(C) Priority under this section must not be given to a person if a health care provider, responsible for the care of a client who is unable to consent, determines that the person is not reasonably available, is not willing to make health care decisions for the client, or is unable to consent as defined in Section 44-66-20 of the Adult Health Care Consent Act.”

Time effective

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 22nd day of May, 2019.

Approved the 24th day of May, 2019.

Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-10

§ 44-22-10. Definitions.

Effective: June 1, 2015

[Currentness](#)

As used in this chapter:

- (1) “Authorized health care provider” means advanced practice registered nurses and physician assistants licensed in South Carolina and authorized to provide specific treatments, care, or services pursuant to their respective practice acts in Title 40.
- (2) “Director” means the Director of the Department of Mental Health.
- (3) “Court” means probate court.
- (4) “Department” means the State Department of Mental Health.
- (5) “Facility” means a residential program operated by the department.
- (6) “Independent examination” means an examination of a patient by a qualified employee of the department.
- (7) “Individual plan of treatment” means a plan written by a multi-disciplinary team setting forth measurable goals and objectives in prescribing an integrated program of individual designed activities or therapies necessary to achieve the goals and objectives.
- (8) “Major medical treatment” means a medical, surgical, or diagnostic intervention or procedure where a general anesthetic is used or which involves significant invasions of bodily integrity requiring an incision or producing substantial pain, discomfort, debilitation, or having a significant recovery period. It does not include a routine diagnosis or treatment such as the administration of medications or nutrition or the extraction of bodily fluids for analysis, dental care performed with local anesthetic, procedures which are provided under emergency circumstances, or the withdrawal or discontinuance of medical treatment which is sustaining life functions.
- (9) “Mental disability” means a medically diagnosable, abnormal condition which is expected to continue for a considerable length of time, whether correctable or uncorrectable, which reasonably is expected to limit the person's functional ability.

(10) “Multi-disciplinary team” means persons drawn from or representing the professional disciplines or service areas included in the treatment plan.

(11) “Patient” means an individual undergoing treatment in the department; however, the term does not include a person committed to the department pursuant to Chapter 48 of Title 44.

(12) “Patient unable to consent” means a patient unable to appreciate the nature and implications of his condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner. This definition does not include a person under eighteen years of age, and this chapter does not affect the delivery of health care to that person unless he is married or has been determined judicially to be emancipated. A patient's inability to consent must be certified by two licensed physicians, each of whom has examined the patient. However, in an emergency the patient's inability to consent may be certified by a health care professional responsible for his care if the health care professional states in writing in the patient's record that the delay occasioned by obtaining certification from two licensed physicians would be detrimental to his health. A certifying physician or other health care professional shall give an opinion regarding the cause and nature of the inability to consent, its extent, and its probable duration.

(13) “Reasonably available” means that a person to be contacted may be contacted with diligent efforts by the attending physician or another person acting on behalf of the attending physician.

(14) “Treatment” means the attempted correction or facilitation of a mental illness or alcohol and drug abuse.

Credits

HISTORY: 1991 Act No. 127, § 1; 1992 Act No. 279, § 1; 1993 Act No. 181, § 1079; 1998 Act No. 321, § 5; 2015 Act No. 32 (S.474), § 1, eff June 1, 2015.

[Notes of Decisions \(2\)](#)

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Code 1976 § 44-22-10, SC ST § 44-22-10

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-20

§ 44-22-20. Right to writ of habeas corpus.

Currentness

Patients have the right to the writ of habeas corpus.

Credits

HISTORY: 1991 Act No. 127, § 1.

Editors' Notes

FEDERAL ASPECTS

Civil Rights of Institutionalized Patients Act, see 42 U.S.C.A. §§ 1997 et seq.

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-30

§ 44-22-30. Right to counsel for involuntarily committed persons suffering from mental illness or chemical dependency.

Currentness

Persons suffering from mental illness or chemical dependency have the right to be represented by counsel when involuntarily committed to the department pursuant to [Sections 44-17-530](#) and [44-52-110](#).

Credits

HISTORY: [1991 Act No. 127](#), § 1.

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-40

§ 44-22-40. Consent to electro-convulsive therapy or major medical treatment; determination of ability to give consent; who may give consent.

Currentness

(A) A patient in need of electro-convulsive therapy or major medical treatment must be examined by a qualified physician to determine if the patient is able to consent to electro-convulsive therapy or major medical treatment. Where a patient is determined unable to consent to surgery or electro-convulsive therapy or major medical therapy or treatment, decisions concerning the need for treatment may be made by the following persons in the following order of priority:

- (1) a guardian appointed by the court pursuant to Article 5, Part 3 of the South Carolina Probate Code, if the decision is within the scope of the guardianship;
- (2) an attorney-in-fact appointed by the patient in a durable power of attorney executed pursuant to [Section 62-5-501](#), if the decision is within the scope of his authority;
- (3) a person given priority to make health care decisions for the patient by another statutory provision;
- (4) a spouse of the patient unless the spouse and the patient are separated pursuant to one of the following:
 - (a) entry of a pendente lite order in a divorce or separate maintenance action;
 - (b) formal signing of a written property or marital settlement agreement;
 - (c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;
- (5) a parent of the patient or child eighteen years of age or older of the patient;
- (6) a sibling or grandchild eighteen years of age or older of the patient or grandparent of the patient;
- (7) other relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient;

(8) a person given authority to make health care decisions for the patient by another statutory provision.

(B) If persons of equal priority disagree on whether certain health care should be provided to a patient who is unable to consent, an authorized person, a health care provider involved in the care of the patient, or another person interested in the welfare of the patient may petition the probate court for an order determining what care is to be provided or for appointment of a temporary or permanent guardian.

(C) Priority under this section must not be given to a person if a health care provider responsible for the care of a patient who is unable to consent determines that the person is not reasonably available, is not willing to make health care decisions for the patient, or is unable to consent as defined in [Section 44-22-10\(6\)](#).

(D) An attending physician or other health care professional responsible for the care of a patient who is unable to consent may not give priority or authority under subsection (A)(5) through (8) to a person if the attending physician or health care professional has actual knowledge that, before becoming unable to consent, the patient did not want that person involved in decisions concerning his care.

(E) This section does not authorize a person to make health care decisions on behalf of a patient who is unable to consent if, in the opinion of the certifying physicians, the patient's inability to consent is temporary, and the attending physician or other health care professional responsible for the care of the patient determines that the delay occasioned by postponing treatment until the patient regains the ability to consent will not result in significant detriment to the patient's health.

(F) This section does not affect the application of the Adult Health Care Consent Act, [Sections 44-66-10](#) through [44-66-80](#), to a patient in need of health care.

Credits

HISTORY: [1991 Act No. 127](#), § 1.

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-50

§ 44-22-50. Treatment suited to needs; least restrictive care and treatment.

Currentness

(A) A patient receiving services for mental illness or alcohol and drug abuse shall receive care and treatment that is suited to his needs and which is the least restrictive appropriate care and treatment. The care and treatment must be administered skillfully, safely, and humanely with full respect for the patient's dignity and personal integrity.

(B) Persons who operate facilities of the department shall ensure that restrictions on a residential patient's liberty are confined to those minimally necessary to establish the therapeutic objectives for the patient. The department and the Department of Alcohol and Other Drug Abuse Services shall make every effort to ensure that no patient is admitted to a facility unless a prior determination has been made that residence in the facility is the least restrictive setting feasible for the patient.

(C) In cases of emergency admissions, when the least restrictive setting is not available, patients must be admitted to the nearest appropriate facility until the patient may be moved to the least restrictive setting.

(D) No patient may remain at a level of care that is more expensive and restrictive than is warranted to meet his needs when the appropriate setting is available.

(E) Patients have a right to the least restrictive conditions necessary to achieve the purposes of treatment. The facility shall make every attempt to move residents from:

- (1) more to less structured living;
- (2) larger to smaller facilities;
- (3) larger to smaller living units;
- (4) group to individual residences;
- (5) segregated from the community to integrated into the community living;
- (6) dependent to independent living.

Credits

HISTORY: 1991 Act No. 127, § 1; 1993 Act No. 181, § 1080.

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-60

§ 44-22-60. Explanation of rights with regard to admission to facility; individualized treatment plan.

Effective: June 1, 2015

[Currentness](#)

(A) Before or when admitted to a facility, a patient or his guardian or parent must be provided with an explanation, in terms and language appropriate to the person's ability to understand, of the rights of the patient while under the care of the facility.

(B) Within six hours of admission a patient must be examined by a physician or authorized health care provider. Within fourteen days of admission, a patient or his parent or guardian must be provided with a written individualized plan of treatment formulated by a multidisciplinary team and the patient's attending physician. Each patient or his parent or guardian shall participate in an appropriate manner in the planning of services. An interim treatment program based on the preadmission evaluation of the patient must be implemented promptly upon admission. An individualized treatment plan must contain:

- (1) a statement of the nature and degree of the patient's mental illness or chemical dependency and his needs;
- (2) if a physical examination has been conducted, the patient's physical condition;
- (3) a description of intermediate and long-range treatment goals and, if possible, future available services;
- (4) criteria for release to a less restrictive environment, including criteria for discharge and a description of services that may be needed after discharge;
- (5) a statement as to whether or not the patient may be permitted outdoors on a daily basis and, if not, the reasons why. Treatment plans must be updated upon periodic review as provided in [Section 44-22-70](#).

Credits

HISTORY: [1991 Act No. 127, § 1](#); [1992 Act No. 279, § 2](#); [2015 Act No. 32 \(S.474\), § 2](#), eff June 1, 2015.

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Code 1976 § 44-22-60, SC ST § 44-22-60

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-70

§ 44-22-70. Assessment of patient; establishment and review of individualized treatment plan; discharge plan; notice of discharge.

Currentness

(A) The individualized plan of treatment must be reviewed every thirty days by the multi-disciplinary team during the first two months of inpatient treatment. After two months of inpatient treatment, the plan must be reviewed every sixty days, except in long-term nursing care facilities the plan must be reviewed every ninety days. This section does not prohibit review of the plan on a more frequent basis.

(B) After review by the attending physician or multi-disciplinary team, if the results of the examination determine the conditions justifying confinement no longer exist, a notice of intent to discharge must be made immediately to the probate judge having jurisdiction. Notice must be given before discharge to a person who has made a written request to be notified.

(C) For patients committed after a hearing by the probate court for the involuntary inpatient treatment for mental illness or chemical dependency, an appropriate and comprehensive discharge plan must be developed. Planning for a patient's discharge must begin within seventy-two hours of admission, must include input from the patient, and must address community treatment, financial resources, and housing. The facility and community treatment staff must be involved in developing the discharge plan. Representatives of all entities which provide services pursuant to the plan must be consulted and informed about the plan. Based on available resources, the department shall make every effort to implement the discharge plan when the patient, in the opinion of the multi-disciplinary team, is ready for discharge.

Credits

HISTORY: 1991 Act No. 127, § 1; 1992 Act No. 279, § 3; 1992 Act No. 324, § 1.

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Code 1976 § 44-22-70, SC ST § 44-22-70

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-80

§ 44-22-80. Patients' rights.

Currentness

Unless a patient has been adjudicated incompetent, no patient may be denied the right to:

- (1) dispose of property, real and personal;
- (2) execute instruments;
- (3) make purchases;
- (4) enter into contractual relationships;
- (5) hold a driver's license;
- (6) marry or divorce;
- (7) be a qualified elector if otherwise qualified. The county board of voter registration in counties with department facilities reasonably shall assist patients who express a desire to vote to:
 - (a) obtain voter registration forms, applications for absentee ballots, and absentee ballots;
 - (b) comply with other requirements which are prerequisite for voting;
 - (c) vote by absentee ballot if necessary.

Credits

HISTORY: 1991 Act No. 127, § 1.

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Code 1976 § 44-22-80, SC ST § 44-22-80

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-90

§ 44-22-90. Communications with mental health professionals privileged; exceptions.

Currentness

(A) Communications between patients and mental health professionals including general physicians, psychiatrists, psychologists, psychotherapists, nurses, social workers, or other staff members employed in a patient therapist capacity or employees under supervision of them are considered privileged. The patient may refuse to disclose and may prevent a witness from disclosing privileged information except as follows:

- (1) communications between facility staff so long as the information is provided on a “need-to-know” basis;
- (2) in involuntary commitment proceedings, when a patient is diagnosed by a qualified professional as in need of commitment to a mental health facility for care of the patient's mental illness;
- (3) in an emergency where information about the patient is needed to prevent the patient from causing harm to himself or others;
- (4) information related through the course of a court-ordered psychiatric examination if the information is admissible only on issues involving the patient's mental condition;
- (5) in a civil proceeding in which the patient introduces his mental condition as an element of his claim or defense, or, after the patient's death, when the condition is introduced by a party claiming or defending through or as a beneficiary of the patient, and the court finds that it is more important to the interests of justice that the communication be disclosed than the relationship between the patient and psychiatrist be protected;
- (6) when a competent patient gives consent or the guardian of a patient adjudicated as incompetent gives consent for disclosure;
- (7) as otherwise authorized or permitted to be disclosed by statute.

(B) This does not preclude disclosure of information to the Governor's ombudsman office or to the South Carolina Protection and Advocacy System for the Handicapped, Inc.

Credits

HISTORY: 1991 Act No. 127, § 1.

[Notes of Decisions \(1\)](#)

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Code 1976 § 44-22-90, SC ST § 44-22-90

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-100

§ 44-22-100. Confidentiality of records; exceptions; violations and penalties.

Effective: August 1, 2013

[Currentness](#)

(A) Certificates, applications, records, and reports made for the purpose of this chapter or Chapter 9, Chapter 11, Chapter 13, Chapter 15, Chapter 17, Chapter 20, Chapter 23, Chapter 24, Chapter 25, Chapter 27, or Chapter 52, and directly or indirectly identifying a mentally ill or alcohol and drug abuse patient or former patient or individual whose commitment has been sought, must be kept confidential, and must not be disclosed unless:

- (1) the individual identified or the individual's guardian consents;
- (2) a court directs that disclosure is necessary for the conduct of proceedings before the court and that failure to make the disclosure is contrary to public interest;
- (3) disclosure is required for research conducted or authorized by the department or the Department of Alcohol and Other Drug Abuse Services and with the patient's consent;
- (4) disclosure is necessary to cooperate with law enforcement, health, welfare, and other state or federal agencies, or when furthering the welfare of the patient or the patient's family;
- (5) disclosure to a court of competent jurisdiction is necessary for the limited purpose of providing a court order to SLED in order to submit information to the federal National Instant Criminal Background Check System (NICS), established pursuant to the Brady Handgun Violence Prevention Act of 1993, [Pub.L. 103-159](#), and in accordance with Article 10, Chapter 31, Title 23; or
- (6) disclosure is necessary to carry out the provisions of this chapter or Chapter 9, Chapter 11, Chapter 13, Chapter 15, Chapter 17, Chapter 20, Chapter 23, Chapter 24, Chapter 25, Chapter 27, or Chapter 52.

(B) Nothing in this section:

- (1) precludes disclosure, upon proper inquiry, of information as to a patient's current medical condition to members of the patient's family, or the Governor's Office of Ombudsman; or
- (2) requires the release of records of which disclosure is prohibited or regulated by federal law.

(C) A person who violates this section is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than one year, or both.

Credits

HISTORY: [1991 Act No. 127, § 1](#); [1992 Act No. 279, § 4](#); [1993 Act No. 181, § 1081](#); [2013 Act No. 22, § 2](#), eff August 1, 2013.

[Notes of Decisions \(8\)](#)

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Code 1976 § 44-22-100, SC ST § 44-22-100

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-110

§ 44-22-110. Access to medical records; appeal of denial of access.

Currentness

(A) A patient or the guardian of a patient has access to his medical records, and a person subject to a proceeding or receiving services pursuant to this chapter has complete access to his medical records relevant to this commitment if the access is allowed in the presence of professional mental health staff.

(B) Patients or guardians of patients may be refused access to:

(1) information in medical records provided by a third party under assurance that the information remains confidential;

(2) information in medical records if the attending physician determines in writing that the information is detrimental to the patient's treatment regimen. The determination must be placed in the patient's records and must be considered part of the restricted information.

(C) Patients and guardians denied access to medical records may appeal the refusal to the Director of the Department of Mental Health. The director of the residential program shall notify the patient or guardian of the right to appeal.

Credits

HISTORY: 1991 Act No. 127, § 1; 1993 Act No. 181, § 1082.

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Code 1976 § 44-22-110, SC ST § 44-22-110

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-120

§ 44-22-120. Patients' rights; communication with outside; visitors; personal belongings and effects; clothing; religious practice; limits on rights made part of record and valid no more than 30 days.

Currentness

(A) Except to the extent the director of the facility determines it is required by the medical needs or safety of the patient to impose restrictions, a patient may:

(1) communicate by sealed mail, telephone, or otherwise with persons, including official agencies, inside or outside the institution. Reasonable access to writing materials, stamps, and envelopes must be provided. Reasonable access to telephones including funds or means in which to use telephones must be provided. The head of a residential program determines what constitutes reasonable access;

(2) receive visitors including unrestricted visits by legal counsel, private physicians, or members of the clergy or an advocate of the South Carolina Protection and Advocacy System for the Handicapped, Inc., if the visits take place at reasonable hours or by appointment, or both. Each facility must have a designated area where patients and visitors may speak privately if they desire;

(3) wear his own clothes, have access to personal hygiene articles, keep and spend a reasonable sum of his own money, and keep and use his own personal possessions including articles for personal grooming not provided for by the facility unless the clothes or personal possessions are determined by a mental health professional to be dangerous or otherwise inappropriate to the treatment regimen. If clothing is provided by the facility, patients may select from neat, clean, seasonal clothing that allows the patient to appear normal in the community. To the extent staff determines a patient is able and willing to care for and maintain the patient's own clothing, the patient must be assisted in maintaining this clothing during the patient's stay in the facility;

(4) have access to secure individual storage space for his private use. Personal property of a patient brought into the hospital and placed in storage by the hospital must be inventoried. Receipts must be given to the patient and at least one other interested person. The personal property may be reclaimed only by the patient, his spouse, or his parent or guardian as long as he is living unless otherwise ordered by the court. If property belonging to a patient is not reclaimed within ninety days following the patient's discharge or death, the property may be utilized by the department for the benefit of other patients or programs ten days after written notice is sent to the individual or the individual's family at the last known address;

(5) follow religious practices. Religious practices may be prohibited by the facility director if they lead to physical harm to the patient or to others, harassment of other patients, or damage to property.

(B) All limitations imposed by the director of a residential program on the exercise of these rights by the patient and the reasons for the limitations must be made part of the clinical record of the patient. These limitations are valid for no more than thirty days.

Credits

HISTORY: 1991 Act No. 127, § 1; 1992 Act No. 279, §§ 5, 6.

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Code 1976 § 44-22-120, SC ST § 44-22-120

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-130

§ 44-22-130. Physical examination of involuntarily committed patient to rule out physical condition mimicking mental illness.

Currentness

Patients involuntarily committed to a facility may have a physical examination to rule out physical conditions which may mimic mental illness.

Credits

HISTORY: 1991 Act No. 127, § 1.

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Code 1976 § 44-22-130, SC ST § 44-22-130

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-140

§ 44-22-140. Authorization of, and responsibility for, treatment and medication;
guidelines for medication; rights with respect to refusal of treatment.

Effective: June 1, 2015

[Currentness](#)

(A) The attending physician, the physician on call, or the authorized health care provider, is responsible for and shall authorize medications and treatment given or administered to a patient. The physician's or authorized health care provider's authorization and the medical reasons for it must be entered into the patient's clinical record. The authorization is not valid for more than ninety days. Medication must not be used as punishment, for the convenience of staff, or as a substitute to or in quantities that interfere with the patient's treatment program. The patient or his legal guardian may refuse treatment not recognized as standard psychiatric treatment. He may refuse electroconvulsive therapy, aversive reinforcement conditioning, or other unusual or hazardous treatment procedures. If the attending physician or the physician on call decides electroconvulsive therapy is necessary and a statement of the reasons for electroconvulsive therapy is entered in the treatment record of a patient who is considered unable to consent pursuant to [Section 44-22-10\(13\)](#), permission for the treatment may be given in writing by the persons in order of priority specified in [Section 44-22-40\(A\)\(1-8\)](#).

(B) Competent patients may not receive treatment or medication in the absence of their express and informed consent in writing except treatment:

(1) during an emergency situation if the treatment is pursuant to or documented contemporaneously by written order of a physician or authorized health care provider; or

(2) as permitted under applicable law for a person committed by a court to a treatment program or facility.

Credits

HISTORY: [1991 Act No. 127, § 1](#); [2015 Act No. 32 \(S.474\), § 3](#), eff June 1, 2015.

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Code 1976 § 44-22-140, SC ST § 44-22-140

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-150

§ 44-22-150. Restraint; seclusion; physical coercion.

Currentness

(A) No patient residing in a mental health or alcohol and drug abuse facility may be subjected to mechanical restraint, seclusion, or a form of physical coercion or restraint unless the action is authorized in writing by the attending or on-call physician as being required by the medical needs of the patient and unless the use of the restraint is a last resort in treatment.

(B) Each use of a restraint or seclusion and justification for it, including a reasonably specific description of the actions by the patient that warranted restraint or seclusion, must be entered into the clinical record of the patient. These authorizations are not valid for more than twenty-four hours during which the patient's condition must be charted at fifteen-minute intervals. If the orders are extended beyond the twenty-four hours, the extension must have written authorization and justification by the attending physician and then only after he has interviewed and evaluated the patient on an individual basis. Within twenty-four hours a copy of the authorization and justification must be forwarded to the facility supervisor for review. Patients under mechanical restraint must have the restraints removed at least every two hours for motion and exercise. Mechanical restraint must be employed to lessen the possibility of physical injury and to ensure the least possible discomfort. In an emergency such as the occurrence of, or serious threat of, extreme violence, injury to others, personal injury, or attempted suicide, if the director of the facility or the attending physician is not available, designated staff may authorize, in writing, mechanical restraint, seclusion, or physical restraint as necessary. The use must be reported immediately to the director or attending physician who shall authorize its continuance or cessation and shall make a written record of the reasons for the use and of his review. The record and review must be entered into the patient's record. The facility must have written policies and procedures governing the use of mechanical restraints, seclusion, and physical restraints and clearly delineate, in descending order, the personnel who may authorize the use of restraints in emergency situations. The authorization must be posted on each ward.

(C) "Restraint" shall not include medical protective devices used as a regular part of medical, diagnostic, or surgical procedures, used to posturally support a patient, or used to obtain or maintain normative bodily functioning.

Credits

HISTORY: [1991 Act No. 127, § 1](#); [1992 Act No. 279, § 7](#); [2000 Act No. 253, § 9](#).

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Code 1976 § 44-22-150, SC ST § 44-22-150

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KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-160

§ 44-22-160. Employment within facility; compensation; right to refuse nontherapeutic employment.

Currentness

(A) Each patient may refuse nontherapeutic employment within the facility. The department shall establish policies and guidelines to determine what constitutes therapeutic employment. The record and justification of each patient's employment must be sent immediately to the attending physician for review and entered into the patient's record. Patient employment must be compensated in accordance with the Fair Labor Standards Act.

(B) Personal living skills or household tasks not involving maintenance of the facility are not considered employment and are uncompensated.

Credits

HISTORY: [1991 Act No. 127, § 1.](#)

Editors' Notes

FEDERAL ASPECTS

The Fair Labor Standards Act of 1938 is codified in [29 U.S.C.A. §§ 201 et seq.](#)

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Code 1976 § 44-22-160, SC ST § 44-22-160

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-170

§ 44-22-170. Education of school-aged residents.

Currentness

(A) The State Department of Education shall ensure that each school-aged resident of a state-owned, operated, or another designated facility shall receive an appropriate education geared toward the unique capabilities of that person.

(B) If a school-aged resident is unable to assemble in a public school setting, the Department of Education shall implement the appropriate course of instruction.

Credits

HISTORY: 1991 Act No. 127, § 1.

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Code 1976 § 44-22-170, SC ST § 44-22-170

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-180

§ 44-22-180. Exercise and exercise facilities; right to go outdoors.

Currentness

Resident patients must have the right to daily physical exercise. The facility shall provide indoor and outdoor facilities for the exercise. Patients determined able to be outdoors on a daily basis pursuant to [Section 44-22-60](#) must be allowed outdoors on a daily basis in the absence of contrary medical considerations or during inclement weather.

Credits

HISTORY: [1991 Act No. 127, § 1, eff June 5, 1991.](#)

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Code 1976 § 44-22-180, SC ST § 44-22-180

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-190

§ 44-22-190. Finding employment for mentally disabled citizens.

Effective: March 30, 2010

[Currentness](#)

The employment division of the South Carolina Department of Employment and Workforce and the Department of Vocational Rehabilitation shall work with the department in a coordinated effort to find employment for mentally disabled citizens. Services must include, but are not limited to, counseling, referral, timely notification of job listings, and other services of the employment division and the Department of Vocational Rehabilitation.

Credits

HISTORY: [1991 Act No. 127, § 1.](#)

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Code 1976 § 44-22-190, SC ST § 44-22-190

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-200

§ 44-22-200. Move of patient to less restrictive setting;
court approval required for move to more restrictive setting.

Currentness

The head of a treatment facility may move a patient to a less restrictive setting without court approval if the move is consistent with the goals and objectives of the individualized treatment plan. The head of the treatment facility may not move a patient to a more restrictive setting without court approval.

Credits

HISTORY: 1991 Act No. 127, § 1.

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Code 1976 § 44-22-200, SC ST § 44-22-200

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-210

§ 44-22-210. Temporary leaves of absence.

Currentness

(A) The head of a treatment facility or unit may permit the patient to leave the facility on a temporary leave of absence for no longer than ninety days.

(B) The head of the treatment facility or unit upon releasing a patient on a temporary leave of absence may impose conditions on the patient while he is absent from the facility as are proper and in the best interest of the patient and public welfare.

Credits

HISTORY: 1991 Act No. 127, § 1; 1992 Act No. 279, § 8.

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Code 1976 § 44-22-210, SC ST § 44-22-210

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Code of Laws of South Carolina 1976 Annotated
Title 44. Health
Chapter 22. Rights of Mental Health Patients

Code 1976 § 44-22-220

§ 44-22-220. Grievances concerning patient rights; penalties for denial of patient rights.

Effective: June 4, 2008

[Currentness](#)

(A) The department shall develop a system for documenting and addressing grievances concerning patient rights. Grievances concerning patient rights must be reviewed by the department and a determination made concerning whether or not corrective action is warranted. A copy of the written grievance must be forwarded to the Client Advocacy Program and Protection and Advocacy for People with Disabilities.

(B) The department shall develop procedures with time lines to process the grievances in a timely manner. The procedures must be made known to patients.

(C) A person who wilfully causes, or conspires with or assists another to cause, the denial to a patient of rights accorded to the patient under this chapter, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both. A person acting in good faith, either upon actual knowledge or information thought to be reliable, is immune from criminal liability under the provisions of this subsection.

Credits

HISTORY: [1991 Act No. 127, § 1](#); [2008 Act No. 266, § 6](#), eff June 4, 2008.

Editors' Notes

FEDERAL ASPECTS

Civil Rights of Institutionalized Patients Act, [42 U.S.C.A. §§ 1997 et seq.](#)

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Code 1976 § 44-22-220, SC ST § 44-22-220

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APPENDIX E. DOCUMENTS RELATED TO REQUEST 6

South Carolina General Assembly
123rd Session, 2019-2020

A65, R85, H3728

STATUS INFORMATION

General Bill

Sponsors: Reps. Fry, Alexander, Dillard, Erickson, Hewitt, Huggins, Norrell, Pendarvis, Ridgeway, Rutherford, Spires, Trantham, Weeks, West, Wooten, Yow, Henegan, Cogswell, Mack, R. Williams, Gilliard, Govan and B. Newton

Document Path: I:\council\bill\cc\15449vr19.docx

Introduced in the House on January 23, 2019

Introduced in the Senate on April 10, 2019

Last Amended on May 8, 2019

Passed by the General Assembly on May 9, 2019

Governor's Action: May 16, 2019, Signed

Summary: Prescription monitoring program

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/23/2019	House	Introduced and read first time (House Journal-page 7)
1/23/2019	House	Referred to Committee on Medical, Military, Public and Municipal Affairs (House Journal-page 7)
1/30/2019	House	Member(s) request name added as sponsor: Henegan, Cogswell, Gilliard, Mack
3/20/2019	House	Member(s) request name added as sponsor: R. Williams
4/4/2019	House	Committee report: Favorable with amendment Medical, Military, Public and Municipal Affairs (House Journal-page 3)
4/9/2019	House	Member(s) request name added as sponsor: Govan, B. Newton
4/9/2019	House	Amended (House Journal-page 97)
4/9/2019	House	Read second time (House Journal-page 97)
4/9/2019	House	Roll call Yeas-101 Nays-0 (House Journal-page 101)
4/10/2019	House	Read third time and sent to Senate (House Journal-page 13)
4/10/2019	Senate	Introduced and read first time (Senate Journal-page 16)
4/10/2019	Senate	Referred to Committee on Medical Affairs (Senate Journal-page 16)
5/2/2019	Senate	Committee report: Favorable with amendment Medical Affairs (Senate Journal-page 15)
5/3/2019		Scrivener's error corrected
5/8/2019	Senate	Committee Amendment Adopted (Senate Journal-page 110)
5/8/2019	Senate	Amended (Senate Journal-page 110)
5/8/2019	Senate	Roll call Ayes-44 Nays-0 (Senate Journal-page 110)
5/9/2019	Senate	Read third time and returned to House with amendments (Senate Journal-page 41)
5/9/2019	House	Concurred in Senate amendment and enrolled (House Journal-page 159)
5/9/2019	House	Roll call Yeas-103 Nays-0 (House Journal-page 160)
5/13/2019		Ratified R 85
5/16/2019		Signed By Governor
5/31/2019		Effective date 01/01/21
6/5/2019		Act No. 65

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VERSIONS OF THIS BILL

[1/23/2019](#)

[4/4/2019](#)

[4/9/2019](#)

[5/2/2019](#)

[5/3/2019](#)

[5/8/2019](#)

[5/9/2019](#)

(A65, R85, H3728)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44-130-80 SO AS TO REQUIRE HEALTH CARE FACILITIES TO SUBMIT CERTAIN INFORMATION TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL (DHEC) FOR INCLUSION IN THE PRESCRIPTION MONITORING PROGRAM WHEN A PERSON IS ADMINISTERED AN OPIOID ANTIDOTE; TO AMEND SECTION 44-130-60, RELATING TO THE AUTHORITY OF FIRST RESPONDERS TO ADMINISTER OPIOID ANTIDOTES, SO AS TO REQUIRE FIRST RESPONDERS TO SUBMIT CERTAIN INFORMATION TO DHEC FOR INCLUSION IN THE PRESCRIPTION MONITORING PROGRAM; TO AMEND SECTION 44-53-1640, RELATING TO THE PRESCRIPTION MONITORING PROGRAM, SO AS TO REQUIRE THE PROGRAM TO MONITOR THE ADMINISTERING OF OPIOID ANTIDOTES BY FIRST RESPONDERS AND IN EMERGENCY HEALTH CARE SETTINGS; TO AMEND SECTION 44-53-1645, RELATING TO THE REQUIREMENT OF PRACTITIONERS TO REVIEW A PATIENT'S CONTROLLED SUBSTANCE PRESCRIPTION HISTORY BEFORE PRESCRIBING A SCHEDULE II CONTROLLED SUBSTANCE, SO AS TO ALSO REQUIRE A REVIEW OF ANY INCIDENTS IN WHICH THE PATIENT HAS BEEN ADMINISTERED AN OPIOID ANTIDOTE BY A FIRST RESPONDER OR IN AN EMERGENCY HEALTH CARE SETTING; AND TO AMEND SECTION 44-53-360, AS AMENDED, RELATING TO PRESCRIPTIONS, SO AS TO PROVIDE FOR THE USE OF ELECTRONIC PRESCRIPTIONS.

Whereas, the South Carolina General Assembly is committed to combatting the opioid epidemic occurring within this State; and

Whereas, the South Carolina General Assembly has enacted and is working to enact legislation aimed at stemming the misuse of opioids in South Carolina; and

Whereas, collecting information related to opioid use and misuse helps those working to better understand the complexities of substance abuse disorders and enables those working with patients suffering from this disease to develop strategies for treatment, education, and care; and

Whereas, the purpose of this legislation is to provide data to health care professionals treating patients who have been diagnosed with an opioid overdose and received an antidote in response to that overdose; and

Whereas, the South Carolina General Assembly intends for the information collected pursuant to this law to be used by health care professionals to assist patients in getting appropriate treatment including, but not limited to, treatment for substance abuse disorder; and

Whereas, the General Assembly intends further that the information collected pursuant to this law should not be used as the sole determining factor in a decision regarding whether to treat or refuse to treat a patient suffering from an opioid misuse. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

Reporting, health care facility of administered opioid antidote

SECTION 1. Chapter 130, Title 44 of the 1976 Code is amended by adding:

“Section 44-130-80. (A) If a person is administered an opioid antidote in a hospital emergency department or other health care facility and the supervising physician diagnoses the patient as having experienced an opioid overdose, the health care facility, as defined in Section 44-7-130, shall report to the department’s Bureau of Drug Control information regarding the opioid antidote administered for inclusion in the prescription monitoring program. The information submitted must include:

(1) date the opioid antidote was administered; and

(2) name, address, and date of birth of the person to whom the opioid antidote was administered.

(B) The health care facility, as defined in Section 44-7-130, shall submit the information required pursuant to subsection (A) electronically or by facsimile to Drug Control within thirty days after a discharge diagnosis of an opioid overdose and administration of an opioid antidote.

(C)(1) After a health care facility, as defined in Section 44-7-130, submits the name, address, and date of birth of a person to whom an opioid antidote was administered as required by subsection (A), Drug Control shall verify whether any prescription history of the person appears in the prescription monitoring program and, if prescription history exists, shall document for review by a practitioner or an

authorized delegate the date on which the opioid antidote was administered to the person.

(2) Drug Control also shall maintain data on the administering of opioid antidotes as required by this section including, but not limited to, the frequency with which opioid antidotes are administered in hospital emergency departments as required pursuant to subsection (A) and other health care facilities by geographic location.”

Reporting, first responder of administered opioid antidote

SECTION 2. Section 44-130-60 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“(1) A first responder who administers an opioid antidote as provided in this section shall report to the department’s Bureau of Emergency Medical Services information regarding the opioid antidote administered for inclusion in the prescription monitoring program. The information submitted must include:

(a) date the opioid antidote was administered; and

(b) name, address, and date of birth of the person to whom the opioid antidote was administered, if available.

(2) A first responder shall submit the information required pursuant to item (1) electronically or by facsimile to the Bureau of Emergency Services within thirty days of administration. The Bureau of Emergency Medical Services shall transmit the information to the department’s Bureau of Drug Control.

(3)(a) If a first responder submits the name, address, and date of birth of a person to whom an opioid antidote was administered, Drug Control shall verify whether any prescription history of the person appears in the prescription monitoring program and, if prescription history exists, shall document for review by a practitioner or an authorized delegate the date on which the opioid antidote was administered to the person. If no history exists, then Drug Control shall confirm that the antidote was administered in response to a verified opioid overdose. If the antidote was administered in error, then Drug Control shall document the error.

(b) Drug Control also shall maintain data on the administering of opioid antidotes by first responders including, but not limited to, the frequency with which first responders administer opioid antidotes by geographic location, first responder, and dispenser.”

Prescription monitoring program

SECTION 3. Section 44-53-1640(A) of the 1976 Code is amended to read:

“(A) The Department of Health and Environmental Control, Bureau of Drug Control shall establish and maintain a program to monitor the prescribing and dispensing of all Schedule II, III, and IV controlled substances by professionals licensed to prescribe or dispense these substances in this State and the administering of opioid antidotes pursuant to Sections 44-130-60 and 44-130-80.”

Required review of patient’s opioid antidote history

SECTION 4. Section 44-53-1645(A) of the 1976 Code is amended to read:

“(A) A practitioner, or the practitioner’s authorized delegate, shall review a patient’s controlled substance prescription history and history of the administering of an opioid antidote to the patient pursuant to Section 44-130-60 or 44-130-80, as maintained in the prescription monitoring program, before the practitioner issues a prescription for a Schedule II controlled substance. If an authorized delegate reviews a patient’s controlled substance prescription history and history of the administering of an opioid antidote to the patient as provided in this subsection, the practitioner must consult with the authorized delegate regarding the prescription and opioid antidote administering history before issuing a prescription for a Schedule II controlled substance. The consultation must be documented in the patient’s medical record.”

Prescriptions

SECTION 5. Section 44-53-360(a), (b), and (d) of the 1976 Code is amended to read:

“(a) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, or in emergency situations as prescribed by the department by regulation, no controlled substance included in Schedule II may be dispensed without the written or electronic prescription of a practitioner. Prescriptions shall be retained in conformity with the requirements of Section 44-53-340. No prescription for a controlled substance in Schedule II may be refilled.

(b) A pharmacist may dispense a controlled substance included in Schedule III, IV, or V pursuant to either a written or electronic prescription signed by a practitioner, or a facsimile of a written, signed

prescription, transmitted by the practitioner or the practitioner's agent to the pharmacy, or pursuant to an oral prescription, reduced promptly to writing and filed by the pharmacist. A prescription transmitted by facsimile must be received at the pharmacy as it was originally transmitted by facsimile and must include the name and address of the practitioner, the phone number for verbal confirmation, the time and date of transmission, and the name of the pharmacy intended to receive the transmission, as well as any other information required by federal or state law. Such prescription, when authorized, may not be refilled more than five times or later than six months after the date of the prescription unless renewed by the practitioner.

(d) Unless specifically indicated in writing on the face of the prescription or noted in the electronic prescription that it is to be refilled, and the number of times specifically indicated, no prescription may be refilled. The indication of 'PRN' or 'ad lib' or phrases, abbreviations, or symbols of like meaning shall not be construed as to exceed five refills or six months, whichever shall first occur. Preprinted refill instructions on the face of a prescription shall be disregarded by the dispenser unless an affirmative marking or other indication is made by the prescriber."

Prescriptions

SECTION 6. Section 44-53-360(j) of the 1976 Code, as added by Act 201 of 2018, is amended by adding an appropriately numbered item at the end to read:

“() (A) Unless otherwise exempted by this subsection, a practitioner shall electronically prescribe any controlled substance included in Schedules II, III, IV, and V. This subsection does not apply to prescriptions for a controlled substance included in Schedules II through V issued by any of the following:

- (i) a practitioner, other than a pharmacist, who dispenses directly to the ultimate user;
- (ii) a practitioner who orders a controlled substance included in Schedules II through V to be administered in a hospital, nursing home, hospice facility, outpatient dialysis facility, or residential care facility;
- (iii) a practitioner who experiences temporary technological or electrical failure or other extenuating technical circumstances that prevent a prescription from being transmitted electronically; however, the practitioner must document the reason for this exception in the patient's medical record;

(iv) a practitioner who writes a prescription for a controlled substance included in Schedules II through V to be dispensed by a pharmacy located on federal property; however, the practitioner must document the reason for this exception in the patient's medical record;

(v) a person licensed to practice veterinary medicine pursuant to Chapter 69, Title 40; or

(vi) a practitioner who writes a prescription for a controlled substance included in Schedules II through V for a patient who is being discharged from a hospital, emergency department, or urgent care.

(B) A prescription for a controlled substance included in Schedules II, III, IV, and V that includes elements that are not supported by the most recently implemented version of the National Council for Prescription Drug Programs Prescriber/Pharmacist Interface SCRIPT Standard is exempt from this subsection.

(C) A dispenser is not required to verify that a practitioner properly falls under one of the exceptions specified in subsection (a) or (b) before dispensing a controlled substance included in Schedules II through V. A dispenser may continue to dispense a controlled substance included in Schedules II through V from valid written, oral, faxed, or electronic prescriptions that are otherwise consistent with applicable laws.

(D) A dispenser is immune from any civil or criminal liability or disciplinary action from the State Board of Pharmacy for dispensing a prescription written by a prescriber that is in violation of this subsection.”

Time effective

SECTION 7. This act takes effect January 1, 2021.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

APPENDIX F. DOCUMENTS RELATED TO REQUEST 7

No. 91

(R110, H4000)

AN ACT TO MAKE APPROPRIATIONS AND TO PROVIDE REVENUES TO MEET THE ORDINARY EXPENSES OF STATE GOVERNMENT FOR THE FISCAL YEAR BEGINNING JULY 1, 2019, TO REGULATE THE EXPENDITURE OF SUCH FUNDS, AND TO FURTHER PROVIDE FOR THE OPERATION OF STATE GOVERNMENT DURING THIS FISCAL YEAR AND FOR OTHER PURPOSES.

Be it enacted by the General Assembly of the State of South Carolina:

III. EMPLOYEE BENEFITS		
EMPLOYER CONTRIBUTIONS	74,048,155	21,438,955
TOT III. EMPLY BENEFITS	74,048,155	21,438,955
TOT DEPARTMENT OF HLTH & ENVIRONMENTAL CTROL	649,662,400 (3,530.84)	142,622,468 (1,217.38)

**SECTION 35
J120-DEPARTMENT OF MENTAL HEALTH**

	<u>TOTAL FUNDS</u>	<u>GENERAL FUNDS</u>
I. GENERAL ADMINISTRATION		
COMMISSIONERS	214,901	214,901
	(1.00)	(1.00)
CLASSIFIED POSITIONS	2,896,023	2,862,828
	(45.00)	(45.00)
UNCLASSIFIED POSITIONS	523,381	373,223
	(3.50)	(3.50)
OTHER PERSONAL SERVICES	61,548	31,441
OTHER OPERATING EXPENSES	702,499	566,091
TOTAL I. GENERAL ADMINISTRATION	4,398,352 (49.50)	4,048,484 (49.50)
II. PROGRAMS AND SERVICES		
A. COMMUNITY MENTAL HLTH		
1. MENTAL HEALTH CENTERS		
CLASSIFIED POSITIONS	84,051,377	50,072,198
	(2,160.89)	(1,196.62)
UNCLASSIFIED POSITIONS	11,796,002	7,058,561
	(108.76)	(65.74)
OTHER PERSONAL SERVICES	5,030,908	2,444,640
OTHER OPERATING EXPENSES	50,678,614	2,637,598
CASE SERVICES	8,508,545	5,473,892
TOT 1. MENTAL HEALTH CENTERS	160,065,446 (2,269.65)	67,686,889 (1,262.36)

2. PROJECTS & GRANTS

CLASSIFIED POSITIONS	1,361,120	443,490
	(25.00)	(16.00)
UNCLASSIFIED POSITIONS	1,246,430	821,892
	(17.20)	(8.20)
OTHER PERSONAL SERVICES	1,361,088	120,930
OTHER OPERATING EXPENSES	10,934,914	2,676,396
CASE SERVICES	870,856	625,856
S. C. SHARE	250,000	
ALLIAN FOR THE MENTAL ILL	50,000	
TOTAL 2. PROJECTS & GRANTS	16,074,408	4,688,564
	(42.20)	(24.20)

TOT A. COMMUNITY MENTAL HEALTH	176,139,854	72,375,453
	(2,311.85)	(1,286.56)

B. INPATIENT MENTAL HLTH**1. BRYAN PSYCHIATRIC HOS****a. BRYAN CIVIL**

CLASSIFIED POSITIONS	10,941,075	5,840,059
	(378.84)	(211.95)
UNCLASSIFIED POSITIONS	2,062,710	260,000
	(15.71)	(6.08)
OTHER PERSONAL SERVICES	2,935,471	917,100
OTHER OPERATING EXPENSES	11,461,306	601,918
CASE SERVICES	171,202	136,655
TOTAL a. BRYAN CIVIL	27,571,764	7,755,732
	(394.55)	(218.03)

b. BRYAN FORENSICS

CLASSIFIED POSITIONS	5,116,560	4,962,000
	(159.48)	(148.48)
UNCLASSIFIED POSITIONS	962,065	825,000
	(12.34)	(9.13)
OTHER PERSONAL SERVICES	708,791	650,000
OTHER OPERATING EXPENSES	5,584,112	4,565,000
CASE SERVICES	22,348,062	11,279,330
TOTAL b. BRYAN FORENSICS	34,719,590	22,281,330
	(171.82)	(157.61)

c. BRYAN CHILD & ADOLESCENT (HALL INST)		
CLASSIFIED POSITIONS	5,360,172	3,921,389
	(189.98)	(133.71)
UNCLASSIFIED POSITIONS	853,070	
	(14.47)	(6.47)
OTHER PERSONAL SERVICES	1,437,801	446,477
OTHER OPERATING EXPENSES	3,159,735	
CASE SERVICES	75,534	12,000
TOTAL c. BRYAN CHILD & ADOLESCENT (HALL INST)	10,886,312	4,379,866
	(204.45)	(140.18)
TOTAL 1. BRYAN PSYCHIATRIC HOSPITAL	73,177,666	34,416,928
	(770.82)	(515.82)
2. HARRIS PSYCHIATRIC HOS		
CLASSIFIED POSITIONS	9,932,822	6,219,942
	(325.55)	(225.55)
UNCLASSIFIED POSITIONS	1,245,413	327,011
	(13.49)	(6.60)
OTHER PERSONAL SERVICES	1,268,339	430,000
OTHER OPERATING EXPENSES	6,179,371	909,851
CASE SERVICES	374,850	158,500
TOT 2. HARRIS PSYCHIATRIC HOSPITAL	19,000,795	8,045,304
	(339.04)	(232.15)
3. MEDICAL CLINICS		
CLASSIFIED POSITIONS	1,124,975	932,492
	(40.20)	(35.20)
UNCLASSIFIED POSITIONS	450,525	353,500
	(5.00)	(3.00)
OTHER PERSONAL SERVICES	68,863	13,898
OTHER OPERATING EXPENSES	637,196	359,762
CASE SERVICES	25,000	6,000
TOTAL 3. MEDICAL CLINICS	2,306,559	1,665,652
	(45.20)	(38.20)

TOT B. INPATIENT MENTAL HEALTH	94,485,020 (1,155.06)	44,127,884 (786.17)
C. ADDICTIONS		
1. MORRIS VILLAGE		
CLASSIFIED POSITIONS	7,049,189 (193.39)	6,354,455 (161.88)
UNCLASSIFIED POSITIONS	506,213 (5.48)	180,783 (4.48)
OTHER PERSONAL SERVICES	1,977,507	898,507
OTHER OPERATING EXPENSES	2,543,843	
CASE SERVICES	90,250	35,000
TOTAL 1. MORRIS VILLAGE	12,167,002 (198.87)	7,468,745 (166.36)
TOTAL C. ADDICTIONS	12,167,002 (198.87)	7,468,745 (166.36)
D. CLINICAL & SPPRT SRVCS		
1. ADMINISTRATIVE SERVICES		
CLASSIFIED POSITIONS	13,279,013 (274.26)	12,300,890 (264.51)
UNCLASSIFIED POSITIONS	260,701 (4.00)	223,959 (4.00)
OTHER PERSONAL SERVICES	610,877	583,877
OTHER OPERATING EXPENSES	13,525,495	7,541,396
CASE SERVICES	125,000	
TOTAL 1. ADMINISTRATIVE SERVICES	27,801,086 (278.26)	20,650,122 (268.51)
2. PUBLIC SAFETY DIVISION		
CLASSIFIED POSITIONS	1,639,393 (49.00)	1,449,746 (39.00)
OTHER PERSONAL SERVICES	61,465	50,000
OTHER OPERATING EXPENSES	644,486	146,305
TOTAL 2. PUBLIC SAFETY DIVISION	2,345,344 (49.00)	1,646,051 (39.00)

3. NUTRITIONAL

CLASSIFIED POSITIONS	1,831,567	1,681,567
	(66.92)	(66.92)
OTHER PERSONAL SERVICES	328,361	78,361
OTHER OPERATING EXPENSES	3,234,526	1,994,950
TOTAL 3. NUTRITIONAL	5,394,454	3,754,878
	(66.92)	(66.92)

4. TRAINING & RESEARCH

CLASSIFIED POSITIONS	880,572	880,572
	(21.63)	(21.63)
OTHER PERSONAL SERVICES	20,000	20,000
OTHER OPERATING EXPENSES	1,408,079	1,208,079
TOT 4. TRAIN & RESEARCH	2,308,651	2,108,651
	(21.63)	(21.63)

TOT D. CLINICAL & SUPPORT SERVICES	37,849,535	28,159,702
	(415.81)	(396.06)

E. LONG TERM CARE**1. STONE PAVILION**

CLASSIFIED POSITIONS	4,120,250	1,789,531
	(141.75)	(45.85)
UNCLASSIFIED POSITIONS	24,000	24,000
	(3.50)	(3.50)
OTHER PERSONAL SERVICES	1,762,962	302,533
OTHER OPERATING EXPENSES	3,305,800	1,615,029
CASE SERVICES	76,503	8,500
TOTAL 1. STONE PAVILION	9,289,515	3,739,593
	(145.25)	(49.35)

2. CAMPBELL VETERANS HOME

CLASSIFIED POSITIONS	55,000	55,000
	(1.05)	(1.05)
OTHER OPERATING EXPENSES	34,000	34,000
CASE SERVICES	20,362,280	7,174,286
TOTAL 2. CAMPBELL VETERANS HOME	20,451,280	7,263,286
	(1.05)	(1.05)

3. VETERANS' VICTORY HOUSE

CLASSIFIED POSITIONS	57,000	57,000
	(1.05)	(1.05)
OTHER OPERATING EXPENSES	60,121	20,000
CASE SERVICES	20,125,465	7,839,856
TOTAL 3. VETERANS' VICTORY HOUSE	20,242,586	7,916,856
	(1.05)	(1.05)

**4. RODDEY PAVILION
(TUCKER CENTER)**

CLASSIFIED POSITIONS	10,210,919	3,968,847
	(296.85)	(119.67)
UNCLASSIFIED POSITIONS	908,521	133,521
	(7.88)	(4.88)
OTHER PERSONAL SERVICES	2,608,483	270,359
OTHER OPERATING EXPENSES	6,444,309	434,731
CASE SERVICES	320,353	8,700
TOTAL 4. RODDEY PAVILION (TUCKER CENTER)	20,492,585	4,816,158
	(304.73)	(124.55)

TOTAL E. LONG TERM CARE	70,475,966	23,735,893
	(452.08)	(176.00)

**F. SEXUAL PREDATOR
TREATMENT PGM**

CLASSIFIED POSITIONS	1,300,000	1,300,000
	(46.74)	(46.74)
OTHER PERSONAL SERVICES	30,000	30,000
OTHER OPERATING EXPENSES	500,000	500,000
CASE SERVICES	15,694,654	15,694,654
LEASE PAYMENT TO SFAA	2,763,472	2,763,472
TOT F. SEXUAL PREDATOR TREATMENT PGM	20,288,126	20,288,126
	(46.74)	(46.74)

TOTAL II. PROGRAMS AND SERVICES	411,405,503	196,155,803
	(4,580.41)	(2,857.89)

III. EMPLOYEE BENEFITS		
EMPLOYER CONTRIBUTIONS	88,467,874	51,440,063
TOT III. EMPLOY BENEFITS	88,467,874	51,440,063
TOTAL DEPT OF MENTAL HEALTH	504,271,729	251,644,350
	(4,629.91)	(2,907.39)

**SECTION 36
J160-DEPARTMENT OF DISABILITIES
& SPECIAL NEEDS**

	<u>TOTAL FUNDS</u>	<u>GENERAL FUNDS</u>
I. ADMINISTRATION		
COMMISSIONERS	168,043	168,043
	(1.00)	(1.00)
CLASSIFIED POSITIONS	4,794,448	4,546,311
	(84.00)	(79.00)
OTHER PERSONAL SERVICES	262,637	100,000
OTHER OPERATING EXPENSES	3,031,871	
TOTAL I. ADMINISTRATION	8,256,999	4,814,354
	(85.00)	(80.00)
II. PROGRAM & SERVICES		
A. PREVENTION PROGRAM		
OTHER OPERATING EXPENSES	657,098	400,000
GREENWOOD GENETIC CENTER	15,185,571	4,934,300
TOT A. PREVENTION PROG	15,842,669	5,334,300
B. INTELLECTUAL DISABILITY		
FAMILY SUPPORT		
1. CHILDREN'S SERVICES		
CLASSIFIED POSITIONS	119,262	119,262
	(2.00)	(2.00)
OTHER OPERATING EXPENSES	24,770,332	4,377,606
TOT 1. CHILDREN'S SRVCS	24,889,594	4,496,868
	(2.00)	(2.00)

B Grant funds and other federal funds or the state's AIDS Drug Assistance Program rebate funds.

34.58. (DHEC: State Trauma Registry) From the funds appropriated or authorized in the current fiscal year, the Department of Health and Environmental Control, through the State Trauma Registry, shall direct that all state verified trauma centers are required to submit relevant patient care data. The department shall develop appropriate policies or regulations no later than January 1, 2020, to ensure data is collected by all trauma centers.

34.59. (DHEC: Storm Water and Ocean Outfalls) In the current fiscal year, funds appropriated to the department for Ocean Outfalls shall be distributed equally to the City of Myrtle Beach and the City of North Myrtle Beach for the purpose of storm water drainage and ocean outfall construction and repair as state matching funds for Horry County Ocean Water Quality Outfall Initiatives. The department shall be authorized to retain and carry forward these funds into the current fiscal year to be used for the same purpose. Any interest generated by the account must be retained and deposited into this account, to be used as state matching funds for either local or federal funding, and utilized for Ocean Water Quality Outfall Initiatives in Horry County.

34.60. DELETED

SECTION 35 - J120 - DEPARTMENT OF MENTAL HEALTH

35.1. (DMH: Patient Fee Account) The Department of Mental Health is hereby authorized to retain and expend its Patient Fee Account funds. In addition to funds collected for the maintenance and medical care for patients, Medicare funds collected by the department from patients' Medicare benefits and funds collected by the department from its veteran facilities shall be considered as patient fees. The department is authorized to expend these funds for departmental operations, for capital improvements and debt service under the provisions of Act 1276 of 1970, and for the cost of patients' Medicare Part B premiums. The department shall remit \$290,963 to the General Fund, \$400,000 to the Continuum of Care, \$50,000 to the Alliance for the Mentally Ill, and \$250,000 to S.C. Share Self Help Association Regarding Emotions.

35.2. (DMH: Institution Generated Funds) The Department of Mental Health is authorized to retain and expend institution generated funds which are budgeted.

35.3. (DMH: Alzheimer's Funding) Of the funds appropriated to the Department of Mental Health for Community Mental Health Centers, \$900,000 must be used for contractual services to provide respite care and diagnostic services to those who qualify as determined by the Alzheimer's Disease and Related Disorders Association. The department must maximize, to the extent feasible, federal matching dollars. On or before September thirtieth of each year, the Alzheimer's Disease and Related Disorders Association must submit to the department, Governor, Senate Finance Committee, and House Ways and Means Committee an annual financial statement and outcomes measures attained for the fiscal year just ended. These funds may not be expended or transferred during the current fiscal year until the required reports have been received by the department, Governor, Chairman of the Senate Finance Committee, and the Chairman of the House Ways and Means Committee. In addition, when instructed by the Executive Budget Office or the General Assembly to reduce funds by a certain percentage, the department may not reduce the funds transferred to the Alzheimer's Disease and Related Disorders Association greater than such stipulated percentage.

35.4. (DMH: Crisis Intervention Training) Of the funds appropriated to the department, \$275,000 shall be utilized for the National Alliance on Mental Illness (NAMI) SC for Crisis Intervention Training (CIT).

35.5. (DMH: Uncompensated Patient Medical Care) There is created an Uncompensated Patient Care Fund to be used by the department for medical costs incurred for patients. These funds may be carried forward from the prior fiscal year into the current fiscal year to be used for the same purpose.

35.6. (DMH: Meals in Emergency Operations) The cost of meals may be provided to state employees who are required to work during actual emergencies and emergency simulation exercises when they are not permitted to leave their stations.

35.7. (DMH: Deferred Maintenance, Capital Projects, Ordinary Repair and Maintenance) The Department of Mental Health is authorized to establish an interest bearing fund with the State Treasurer to deposit funds for deferred maintenance and other one-time funds from any source. The department is also authorized to retain and deposit into the fund proceeds from the sale of excess real property owned by, under the control of, or assigned to the department. After receiving any required approvals, the department is authorized to expend these funds

for the purpose of deferred maintenance, capital projects, and ordinary repair and maintenance. These funds may be carried forward from the prior fiscal year into the current fiscal year to be used for the same purpose.

35.8. (DMH: Lease Payments to SFAA for SVP Program) In the current fiscal year, funds appropriated and authorized to the Department of Mental Health for Lease Payments to the State Fiscal Accountability Authority for the Sexually Violent Predator Program are exempt from any across-the-board base reductions.

35.9. (DMH: Commitments to Treatment Facilities) The authorization for continued implementation of Article 7, Chapter 17, Title 44 of the 1976 Code, Chapter 24, Title 44 of the 1976 Code, and Chapter 52, Title 44 of the 1976 Code, relating to commitments, admissions and discharges to mental health facilities, or treatment facility for the purpose of alcohol and drug abuse treatment, shall be expended for the compensation of court appointed private examiners, guardians ad litem, and attorneys for proposed patients, and related costs arising from the filing, service and copying of legal papers and the transcription of hearings or testimony. Court appointed private examiners, guardians ad litem and attorneys shall be paid at such rates or schedules as are jointly determined to be reasonable by the South Carolina Association of Probate Judges, the Office of Court Administration, and the Department of Mental Health with the approval of the Attorney General. The Department of Mental Health shall notify the Senate Finance Committee and the House Ways and Means Committee of any fee adjustment or change in schedule before implementation and may enter into an agreement with the Commission on Indigent Defense solely for the purpose of processing vouchers for the payment of above fees and costs.

35.10. (DMH: Judicial Commitment) Except as otherwise provided in Proviso 117.5, no money authorized to be expended for the purposes set forth in Proviso 35.9 shall be used to compensate any state employees appointed by the court as examiners, guardians ad litem, or attorneys nor shall such funds be used in payment to any state agency for providing such services by their employees.