



*State of South Carolina*  
*Department of Mental Health*

**MENTAL HEALTH COMMISSION:**

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September 9, 2019

**Mark Binkley**  
Interim State Director

The Honorable John Taliaferro (Jay) West, Subcommittee Chair  
South Carolina House of Representatives  
Legislative Oversight Committee  
Healthcare and Regulatory Subcommittee  
Post Office Box 11867  
Columbia, South Carolina 29211

Re: August 19, 2019 Letter

Dear Chairman West:

Thank you for your letter of August 19, 2019 transmitting a number of requests for information following the August 12, 2019 Subcommittee hearing.

Attached is Part 2 of the Department's response to those requests. Please let me know if you or other members have any questions about the information provided.

Sincerely,

A handwritten signature in blue ink, reading "Mark W. Binkley, JD". The signature is stylized and includes a long horizontal flourish extending to the right.

Mark W. Binkley, JD  
Interim State Director of Mental Health

**MISSION STATEMENT**

To support the recovery of people with mental illnesses.



**PROPOSED CHANGES TO SECTION 44-23-430, PROCEDURE WHEN A COURT DETERMINES A DEFENDANT LACKS CAPACITY TO STAND TRIAL, BUT IS LIKELY TO BECOME REGAIN CAPACITY IN THE FORSEEABLE FUTURE**

ARTICLE 5

Fitness to Stand Trial

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

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

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

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

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

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

(D) If the examiners designated by the Department of Mental Health find indications of intellectual disability or a related disability but not mental illness, the department shall not render an evaluation on the person's mental capacity, but shall inform the court that the person is "not mentally ill" and recommend that the person should be evaluated for competency to stand trial by

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

**SECTION 44-23-420.** Designated examiners' report.

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

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

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

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

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

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

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

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

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

(3) the person is unfit to stand trial but likely to become fit in the foreseeable future, the court shall order him ~~hospitalized~~ to undergo treatment by the Department of Mental Health for up to an additional sixty-one hundred and eighty days from the commencement of restoration treatment. If the person is in detention, the Department of Mental Health shall have discretion to provide the restoration treatment in a hospital or in a detention facility. If the person is on bond, the Department of Mental Health shall have discretion to provide the restoration treatment in a hospital or on an outpatient basis.

(4) ~~If the person is found to be unfit at the conclusion of the additional-period of restoration 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 and who are hospitalized in accordance with this Article 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.

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

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

If either the person found unfit to stand trial or his counsel believes he can establish a defense of not guilty to the charges other than the defense of insanity, he may request an opportunity to offer a defense on the merits to the court. The court may require affidavits and evidence in support of such request. If the court grants such request, the evidence of the State and the

defendant shall be heard before the court sitting without a jury. If after hearing such petition the court finds the evidence is such as would entitle the defendant to a directed verdict of acquittal, it shall dismiss the indictment or other charges.

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

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

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

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

- (1) if upon the completion of the hearing, the court finds the person unfit to stand trial, it shall order his release from the hospital; and
- (2) if such a person has been hospitalized for a period of time exceeding the maximum possible period of imprisonment to which the person could have been sentenced if convicted as charged, the court shall order the charges dismissed and the person released; or
- (3) the court may order that criminal proceedings against a person who has been found fit to stand trial be resumed, or the court may dismiss criminal charges and order the person released if so much time has elapsed that prosecution would not be in the interest of justice.

**LETTER OF FEBRUARY 20, 2019**  
**INPATIENT SERVICES PLANNING**

Quantify the shortage. Explain the method for the quantification.

According to the Treatment Advocacy Center, most health policy commentators believe that a State should have a minimum of 40 to 60 publicly available inpatient psychiatric beds per 100,000 population to meet demand. However, empirical research to relate any bed target to desired outcomes has not been conducted.

Also, as SCDMH and others have shown with crisis stabilization services, psychiatric hospital bed demand can be reduced by increasing the type and capacity of community crisis services.

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**LETTER OF JULY 22, 2019**  
**FEEDBACK**

Is public input a regular agenda item on the DMH Commission agenda?

No. There is not traditionally any public hearing or public comment period scheduled on the Commission's agenda.