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Indicates New Matter

COMMITTEE REPORT

April 13, 2016

**H. 3952**

Introduced by Rep. Bannister

S. Printed 4/13/16--H.

Read the first time April 14, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3952) to amend Section 44‑17‑410, as amended, Code of Laws of South Carolina, 1976, relating to the emergency admission of a person likely to cause serious, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Section 44‑23‑10 of the 1976 Code, as last amended by Act 47 of 2011, is amended to read:

“Section 44‑23‑10. 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.

~~(8)~~(9) ‘Hospital’ means a public or private hospital.

~~(9)~~(10) ‘Interested person’ means a parent, guardian, spouse, adult next of kin, or nearest friend.

~~(10)~~(11) ‘Leave of absence’ means a qualified release from an institution or a hospital.

~~(11)~~(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.

~~(12)~~(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’s~~ person is gravely disabled and that reasonable provision for the person’s protection is not available in the community.

~~(13)~~(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.

~~(14)~~(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.

~~(15)~~(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.

~~(16)~~(17) ‘Observation’ means diagnostic evaluation, medical, psychiatric and psychological examination, and care of a person for the purpose of determining his mental condition.

~~(17)~~(18) ‘Officer of the peace’ means any state, county, or city police officer, officer of the State Highway Patrol, sheriff, or deputy sheriff.

~~(18)~~(19) ‘Parent’ means natural parent, adoptive parent, stepparent, or person with legal custody.

~~(19)~~(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.

~~(20)~~(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.

~~(21)~~(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.

~~(22)~~(23) ‘State hospital’ means a hospital, or part of a hospital, equipped to provide inpatient care and treatment and maintained by the department.

~~(23)~~(24) ‘State mental health facility’ or ‘facility’ means any hospital, clinic, or other institution maintained by the department.

~~(24)~~(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.

~~(25)~~(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.”

SECTION 2. Section 44‑17‑410(1) of the 1976 Code is amended to read:

“(1) written affidavit under oath by a person stating:

(a) a belief that the person is mentally ill as defined in Section 44‑23‑10 and because of this condition is likely to cause serious harm to himself or others as defined in Section 44‑23‑10, if not immediately hospitalized;

(b) the specific type of serious harm thought probable if the person is not immediately hospitalized and the factual basis for this belief;”

SECTION 3. Section 44‑17‑440 of the 1976 Code is amended to read:

“Section 44‑17‑440. (A) The certificate required by Section 44‑17‑410, emergency admission, must authorize and require a state or local law enforcement officer, preferably in civilian clothes and preferably with crisis intervention training, to take into custody and transport the person to the hospital designated by the certification. No person may be taken into custody after the expiration of three days from the date of certification. A friend or relative may transport the individual to the mental health facility designated in the application or engage the services of an emergency medical technician as defined by Section 44‑61‑310, if the friend or relative has read and signed a statement on the certificate which clearly states that it is the responsibility of a state or local law enforcement officer to provide timely transportation for the patient and that the friend or relative freely chooses to assume that responsibility and liability. A friend or relative who chooses to transport the patient is not entitled to reimbursement from the State for the cost of the transportation. An officer acting in accordance with this article is immune from civil liability. Upon entering a written agreement between the local law enforcement agency, the governing body of the local government, and the directors of the community mental health centers, an alternative transportation program utilizing peer supporters and case managers may be arranged for nonviolent persons requiring mental health treatment. The agreement clearly must define the responsibilities of each party and the requirements for program participation.

(B) For transportation of an individual who is committed but not yet admitted to a facility, who needs to be transported from a mental health center or an emergency department of a hospital to another facility for admission, the individual may be transported by an emergency medical technician.

(C) For an individual who has eloped after commitment, a request for an order to search, locate, and return must be issued by the probate court and transportation must be by a state or local law enforcement officer.”

SECTION 4. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 44‑17‑410, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EMERGENCY ADMISSION OF A PERSON LIKELY TO CAUSE SERIOUS HARM TO HIMSELF OR OTHERS, SO AS TO ADD A PERSON WHO MAY BECOME GRAVELY DISABLED IF NOT IMMEDIATELY HOSPITALIZED; TO AMEND SECTION 44‑17‑430, AS AMENDED, RELATING TO THE EXAMINATION UNDER CUSTODY OF A PERSON REQUIRING IMMEDIATE HOSPITALIZATION WHEN EXAMINATION IS NOT OTHERWISE POSSIBLE, SO AS TO ADD A PERSON WHO MAY BECOME GRAVELY DISABLED IF NOT IMMEDIATELY HOSPITALIZED; AND TO AMEND SECTION 44‑17‑440, RELATING TO THE CUSTODY AND TRANSPORT OF A PERSON REQUIRING IMMEDIATE CARE, SO AS TO REQUIRE A STATE OR LOCAL LAW ENFORCEMENT OFFICER WITH CRISIS INTERVENTION TRAINING AND DRESSED IN CIVILIAN CLOTHES OR AN EMERGENCY MEDICAL TECHNICIAN TO TAKE INTO CUSTODY AND TRANSPORT THE PERSON TO THE HOSPITAL.

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

SECTION 1. Section 44‑17‑410(1) and (2) of the 1976 Code is amended to read:

“(1) written affidavit under oath by a person stating:

(a) a belief that the person is mentally ill and because of this condition is likely to cause serious harm to himself or others, or may become gravely disabled if not immediately hospitalized;

(b) the specific type of serious harm thought probable if the person is not immediately hospitalized and the factual basis for this belief;

(2) a certification in triplicate by at least one licensed physician stating that the physician has examined the person and is of the opinion that the person is mentally ill and because of this condition is likely to cause harm to himself through neglect, inability to care for himself, or personal injury, or otherwise, or to others, or may become gravely disabled if not immediately hospitalized. The certification must contain the grounds for the opinion. A person for whom a certificate has been issued may not be admitted on the basis of that certificate after the expiration of three calendar days after the date of the examination;”

SECTION 2. Section 44‑17‑430 of the 1976 Code, as last amended by Act 120 of 2005, is further amended to read:

“Section 44‑17‑430. If a person believed to be mentally ill and because of this condition likely to cause serious harm, or become gravely disabled if not immediately hospitalized cannot be examined by at least one licensed physician pursuant to Section 44‑17‑410 because the person’s whereabouts are unknown or for any other reason, the petitioner seeking commitment pursuant to Section 44‑17‑410 shall execute an affidavit stating a belief that the individual is mentally ill and because of this condition likely to cause serious harm, or become gravely disabled if not hospitalized, the ground for this belief and that the usual procedure for examination cannot be followed and the reason why. Upon presentation of an affidavit, the judge of probate for the county in which the individual is present may issue an order requiring a state or local law enforcement officer to take the individual into custody for a period not exceeding twenty four hours. The order expires seventy two hours after it was issued, and if the person is not taken into custody within those seventy two hours, the order is no longer valid. During the person’s detention the person must be examined by at least one licensed physician as provided for in Section 44‑17‑410(2). The individual taken into custody has the right to representation by an attorney. If within the twenty four hours the person in custody is not examined by a licensed physician or, if upon examination the physician does not execute the certification provided for in Section 44‑17‑410(2), the proceedings must be terminated and the individual in custody must be released immediately. Otherwise, proceedings must be held pursuant to Section 44‑17‑410(3).”

SECTION 3. Section 44‑17‑440 of the 1976 Code is amended to read:

“Section 44‑17‑440. The certificate required by Section 44‑17‑410 must authorize and require a state or local law enforcement officer, with both crisis intervention training and dressed ~~preferably~~ in civilian clothes, or alternatively an emergency medical technician, to take into custody and transport the person to the hospital designated by the certification. No person may be taken into custody after the expiration of three days from the date of certification. A friend or relative may transport the individual to the mental health facility designated in the application, if the friend or relative has read and signed a statement on the certificate which clearly states that it is the responsibility of a state or local law enforcement officer to provide timely transportation for the patient and that the friend or relative freely chooses to assume that responsibility. A friend or relative who chooses to transport the patient is not entitled to reimbursement from the State for the cost of the transportation. An officer acting in accordance with this article is immune from civil liability. Upon entering a written agreement between the local law enforcement agency, the governing body of the local government, and the directors of the community mental health centers, an alternative transportation program utilizing peer supporters and case managers may be arranged for nonviolent persons requiring mental health treatment. The agreement clearly must define the responsibilities of each party and the requirements for program participation.”

SECTION 4. This act takes effect upon approval by the Governor.

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