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CHAPTER 23.

 PROVISIONS APPLICABLE TO BOTH MENTALLY ILL AND MENTALLY RETARDED PERSONS

ARTICLE 1.

 DEFINITIONS AND GENERAL MATTER

**SECTION 44‑23‑10.** Definitions.

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

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

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

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

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

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

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

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

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

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

(11) “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) “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 judgment is so affected that the person is unable to protect himself or herself in the community and that reasonable provision for the person’s protection is not available in the community.

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

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

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

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

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

(24) “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) “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 44‑23‑20.** Inapplicability to Whitten Center.

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

**SECTION 44‑23‑30.** Repealed by 2008, Act No. 266, Section 10, eff June 4, 2008.

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

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

ARTICLE 3.

 DETENTION, CONFINEMENT AND TRANSFER OF CONFINED PERSONS

**SECTION 44‑23‑210.** Transfer of confined persons to or between mental health or mental retardation institutions.

A person confined in a state institution or a person confined in a state or private mental health or mental retardation facility may be transferred to another mental health or mental retardation 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.

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

No person who is mentally ill or mentally retarded 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 retardation 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 retardation facility.

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

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

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

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

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 being mentally retarded or having a related disability or by both sets of examiners if the person is suspected of having both mental illness and mental retardation 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 mental retardation 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 mental retardation 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 mental retardation 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 mental retardation 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 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.

**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 mental retardation 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.

ARTICLE 11.

 TREATMENT, RIGHTS, PRIVILEGES AND EXPENSES OF PATIENTS GENERALLY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) As used in this section:

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

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

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

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

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

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

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