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COMMITTEE REPORT

April 15, 2021

**H. 3773**

Introduced by Reps. West, G.M. Smith, Weeks and White

S. Printed 4/15/21--H.

Read the first time January 28, 2021.

**THE COMMITTEE ON MEDICAL,**

**MILITARY, PUBLIC AND MUNICIPAL AFFAIRS**

To whom was referred a Bill (H. 3773) to amend Section 44‑23‑10, Code of Laws of South Carolina, 1976, relating to definitions applicable to both mentally ill persons and persons with intellectual disability, etc., respectfully

**REPORT:**

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

LEON HOWARD for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill establishes restoration treatment as an option for individuals who are found unfit to stand trial, but who are likely to become fit in the foreseeable future. Currently, if an individual is found to be unfit to stand trial but likely to be fit in the foreseeable future, the individual is hospitalized for up to sixty days. After this sixty-day period, if the individual is still found to be unfit to stand trial, the solicitor responsible for prosecution shall initiate judicial admission proceedings to have the individual involuntarily hospitalized. This bill will allow individuals found unfit to stand trial who are likely to become fit in the foreseeable future to undergo restoration treatment provided by the Department of Mental Health for up to one-hundred and eighty days. This bill also gives DMH the discretion to provide restoration treatment at a hospital or detention facility if an individual is detained, or in a hospital or outpatient basis if the individual is on bond.

**Department of Mental Health.**

DMH estimates that extending the period for restoration treatment from sixty days to one-hundred and eighty days will have an undetermined fiscal impact on the department. According to DMH, under normal operations prior to the COVID-19 pandemic, there were an average of thirty patients receiving restoration treatment at the department’s G. Werber Bryan Psychiatric Hospital. DMH indicates the cost to provide restoration treatment services at the department’s psychiatric hospital is approximately $500 per day per patient. Currently, when a patient completes the sixty-day period for restoration treatment and is found still unfit to stand trial, the patient is recommitted to DMH and treated in a separate section of the hospital devoted to long-term patients. DMH reports that between January 1, 2020 and February 1, 2021, forty-four percent of patients who completed the sixty-day restoration treatment were found still unfit to stand trial. The average stay of long-term patients is 1,400 days according to DMH. Based on their research, DMH estimates the proposed extension of the treatment period could reduce the current recommitment rate of forty-four percent to twenty-five percent or lower, which could result in a reduction of thirty-five patient recommitments annually. DMH anticipates that over time the reduction in long-term patients will increase the capacity available for restoration treatment.

This bill gives DMH the discretion to provide restoration treatment for individuals who are detained in either a hospital setting or detention facility, and DMH may provide treatment for individuals on bond in either a hospital or out-patient basis. DMH indicates providing treatment in detention centers or on an out-patient basis would not only result in lower cost treatment compared to services provided at their psychiatric hospital, but would also allow the department to more timely admit individuals requiring treatment in a hospital setting who are waiting for a bed. Based on information from other states, DMH estimates the cost to provide jail-based restoration treatment to be $150 to $250 per day per patient. This estimate would provide for 2.5 additional FTEs including a part-time psychiatrist, a full-time psychologist, and a full-time social work counselor. This amount also includes an estimate for other operating expenses, such as overhead charged by the detention center for use of its space, security, and other medical services. DMH estimates program participation of twenty patients at a time for 365 days. Providing service to twenty patients a day for 365 days results in 7,300 patient service days. Providing 7,300 patient service days at $150 per patient per day would cost $1,095,000 annually, while providing 7,300 patient service days at $250 per patient per day would cost $1,825,000 annually. DMH estimates the cost to provide treatment in the community for individuals out on bond to be $100 per day, based on information from other states. This estimate would provide for one additional FTE including a part-time psychiatrist and a part-time psychologist. DMH estimates program participation of ten patients at a time for a full year excluding weekends and holidays, or 250 days. Providing service to ten patients a day for 250 days results in 2,500 patient service days. Providing 2,500 patient service days at $100 per patient per day would cost $250,000 annually. Therefore, DMH estimates this bill will increase their general fund expenditures by as much as $2,075,000 annually beginning in FY 2021-22 to operate a jail-based and community-based restoration treatment programs.

**Judicial Department.**  This bill requires that restoration treatment be ordered for a person who is mentally ill or has an intellectual disability and has been determined unfit to stand trial but is likely to become fit in the foreseeable future.  It also extends the treatment time frame to 180 days and gives the Department of Mental Health the discretion of selecting a treatment location for such persons.  The bill also provides that general sessions or family courts handling cases for persons who have pending criminal charges for a violent offense determine whether the person may be released on bond.  While implementation of the bill may cause a delay in the resolution of general sessions or family court cases, there is no data with which to estimate the number of hearings or trials that may be affected.  The department expects to manage any increase in costs associated with delays in the resolution of general sessions or family court cases using existing general fund resources.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 44‑23‑10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS APPLICABLE TO BOTH MENTALLY ILL PERSONS AND PERSONS WITH INTELLECTUAL DISABILITY, SO AS TO ADD A DEFINITION FOR “RESTORATION TREATMENT”; AND TO AMEND SECTION 44‑23‑430, RELATING TO HEARINGS ON A PERSON’S FITNESS TO STAND TRIAL, SO AS TO EXTEND THE LENGTH OF TIME CERTAIN PERSONS UNFIT TO STAND TRIAL MAY BE HOSPITALIZED FOR RESTORATION TO ONE HUNDRED EIGHTY DAYS, TO ALLOW THE DEPARTMENT OF MENTAL HEALTH TO PROVIDE RESTORATION TREATMENT IN DETENTION CENTERS AND ON AN OUTPATIENT BASIS IN CERTAIN CIRCUMSTANCES, AND FOR OTHER PURPOSES.

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

SECTION 1. Section 44‑23‑10(23) to (26) of the 1976 Code is amended to read:

“(23) ‘Restoration treatment’ means treatment provided to a person who has been determined unfit to stand trial but likely to become fit in the foreseeable future, and which has as part of its goals assisting the person to gain the capacity to understand the proceedings against him and to assist in his own defense.

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

~~(24)~~(25) ‘State mental health facility’ or ‘facility’ means any hospital, clinic, or other institution maintained by the department.

~~(25)~~(26) ‘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)~~(27) ‘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 44‑23‑430 of the 1976 Code is amended to read:

“Section 44‑23‑430. (A) 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 restoration treatment by the Department of Mental Health for up to ~~an additional sixty~~ one hundred eighty days from the commencement of restoration treatment. If the person is in detention, the Department of Mental Health has the discretion to provide the restoration treatment in a hospital or detention facility. If the person is on bond, the Department of Mental Health has the discretion to provide the restoration treatment in a hospital or on an outpatient basis. 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~~.

(B) 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.

(C) Persons against whom criminal charges are pending but who are not involuntarily committed following judicial admission proceedings shall be released unless charged with a violent crime. If the pending charge is a violent crime, a hearing must be held by the court in which the charges are pending prior to release on the issue of whether the person shall be released on bond, with terms and conditions appropriate for the safety of the community and the well‑being of the person. Any terms or conditions included in the person’s bond must be therapeutic in nature. Therapeutic terms and conditions may include, but not be limited to, a requirement that the person cooperate in any treatment indicated for their psychiatric or intellectual impairments, including the keeping of scheduled appointments, the taking of all prescribed medications, and abstaining from alcohol or illegal drug use, and a requirement that the person comply with random or scheduled drug screens to insure sobriety and medication compliance. For purposes of this subsection, ‘violent crime’ means any offense included in Section 16‑1‑60.”

SECTION 3. This act takes effect upon approval by the Governor.

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