~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT ADOPTED

April 6, 2022

**H. 3773**

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

S. Printed 4/6/22--S.

Read the first time April 21, 2021.

**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.

Amend Title To Conform

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. Restoration treatment shall only occur in a detention facility with the consent and approval of the sheriff or local government, whichever has lawful custody of the 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: (1) the person is charged with a violent crime or (2) the person is charged with a non-violent crime and the solicitor files a motion to require bond for release. 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. If the pending charge is a non-violent crime, and the solicitor files a motion to require bond for release, a hearing may be held by the court in which the charges are pending to determine whether the person poses such a risk of danger to the community that he must not be released without bond. In addition to any terms or conditions of bond allowed under Section 17-15-10, the court must include terms or conditions of bond that are 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, the 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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