**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 17‑15‑270 SO AS TO PROVIDE FOR A MENTAL HEALTH EVALUATION BEFORE A BOND HEARING AFTER THE ARREST OF A PERSON FROM A MENTAL HEALTH FACILITY OR INSTITUTION; TO PROVIDE FOR NOTIFICATION OF A GUARDIAN OR THE PERSON’S POWER OF ATTORNEY, IF ANY; TO PROVIDE FOR THE POSTPONEMENT OF THE BOND HEARING UNTIL THE PERSON HAS THE CAPACITY TO PARTICIPATE; AND TO PROHIBIT THE USE OF PHYSICAL FORCE AGAINST A PERSON MENTALLY INCAPACITATED TO ATTEND A BOND HEARING.

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

SECTION 1. This act may be cited at the “Jamal Sutherland Justice Act”.

SECTION 2. Chapter 15, Title 17 of the 1976 is amended by adding:

“Section 17‑15‑270. (A) Notwithstanding another provision of law, prior to a bond hearing, a person who is receiving mental health services or treatment at, or is a resident of, a mental health institution or facility who is arrested at such institution or facility must undergo a mental health evaluation performed by the local mental health department to determine if the person has the mental capacity to proceed with the hearing. This mental health evaluation must be scheduled within ten days of arrest. Once scheduled, the mental health professional who performed the evaluation must issue, within forty‑eight hours, a report to the arresting law enforcement agency and the bond court with jurisdiction over the offense charged. In addition, the arresting law enforcement agency must make reasonable efforts to determine if the person has a guardian or person with power of attorney who must be notified of the arrest and the mental health evaluation before the bond hearing may be held. For purposes of this subsection, ‘reasonable efforts’ means consulting with the appropriate mental health institution or facility and asking the person arrested, if he has the mental capacity to respond.

(B) The provisions of this section may not be construed to limit the person’s right to a bond hearing; however, if the person lacks the mental capacity to participate in the bond hearing, the hearing may be postponed by the court until such time as the person is determined to have the mental capacity to participate. The person, his attorney, guardian, or power of attorney, if any, may request subsequent mental health evaluations and one must be conducted within ten days of each request and proceed according to the provisions of this section.

(C) In no event may a person suffering from mental incapacitation, based on the mental health evaluation required by the provisions of this section, be subjected to physical force in order to appear in person at a bond hearing.”

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

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