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## COMMITMENT OF THE MENTALLY ILL IN SOUTH CAROLINA

### *Introduction*

In order to fully appreciate the importance of any subject dealing with mental health, a consideration of a few facts and figures on the mental health situation in the United States is necessary. They show the extent of the problem and why it is a problem with which the general public, as well as the medical and legal professions, must be familiar. There are an estimated 9,000,000 persons in the United States suffering from mental illness and other personality disturbances — about 6% of the present population.<sup>1</sup> Patients in mental hospitals and in institutions for the mentally deficient and epileptic make up 55% of all the patients in all the hospitals in the United States,<sup>2</sup> and yet people suffering from mental disease are the most reluctant to seek medical care. From a financial standpoint, mental illness has been costing the public over a billion dollars a year in tax funds,<sup>3</sup> and patients going to mental hospitals for the first time will lose almost two billion dollars that they would have earned during the time they are sick.<sup>4</sup> Facts and figures on the mental health situation in South Carolina are just as alarming. About one person out of every seventeen in South Carolina will at sometime during his life require hospitalization or active treatment for severe mental illness.<sup>5</sup> With these facts in mind, it is readily seen why the laws which provide for and regulate the commitment of the mentally ill must be adequate and up to date.

### *History*

The South Carolina Constitution provides: "Institutions for the care of the insane and the poor shall always be fostered and supported by this State, and shall be subject to such regulations as the General Assembly may enact."<sup>6</sup> Until recently, the laws of our state relating to persons who are mentally ill have been scattered throughout our code.<sup>6a</sup> Some provisions were obsolete, much of the terminology

1. "*Facts and Figures*", (compiled by the National Association for Mental Health, Inc.).

2. *Ibid.*

3. *Ibid.*

4. *Ibid.*

5. Report of Committee to Study Public and Private Facilities for Mental Health and Mental Health Laws, (under concurrent resolution H. 1543).

6. CONSTITUTION OF SOUTH CAROLINA, Art. XII, § 1.

6a. The old statutes were collected in the 1952 Code, S. C. CODE §§ 32-951-1009 (1952).

was considered by medical men to be harmful to those to whom it referred, provisions were incomplete in their coverage while others were merely repetitious, and on some important points the law was altogether silent.<sup>7</sup> In April of 1951 a joint committee of the House and Senate was appointed to study public and private mental health facilities and the laws affecting mental health in this state. This committee submitted its findings together with recommendations for changes in the law. The first general recommendation made casts light on one of the main issues of the mental health problem. The committee recommended: "The laws relating to hospitalization of the mentally ill in this state should be revised with a view to eliminating the atmosphere of criminality which prevades the existing laws and with a view to eliminating undesirable and sometimes harmful terminology."<sup>8</sup> This indicates that hospital facilities and the mechanics of the commitment statutes, be they the most modern and efficient, will not alone solve the problem. The public too must have a proper and educated attitude toward those who are afflicted in order that commitment statutes may function as intended. It has been quite some time since the State Hospital has been known officially as an asylum, but it is still known as such to the average citizen who is more likely to denominate it by an even less dignified name.<sup>9</sup>

On March 7, 1952, the bill proposed by the joint committee was largely enacted into law.<sup>10</sup> As far as commitment procedures are concerned, the bill proposed by committee and the law which was enacted and is in effect today are so nearly similar as not to warrant discussion. Therefore, discussion will be limited to commitment procedures today as compared to those procedures in effect prior to March 7, 1952. Also the scope of this discussion is limited to the commitment of the mentally ill as opposed to the mentally defective or deficient.<sup>11</sup>

7. Report of Committee, *supra*, p. 2.

8. *Ibid.*, p. 16.

9. It will be noted that in the recently adopted law dealing with mental health, such words as lunatic, insane, asylum, etc., are omitted.

10. Although this bill was adopted in March of 1952, it is not incorporated into the 1952 Code of Laws of South Carolina, and the fact that the 1942 and 1952 code sections are grouped differently may lead one to believe that new law has been included in the new code. (R905, H1775).

11. The committee report, *supra*, defines a mentally ill person as "a person afflicted with a mental disease to such an extent that for his own welfare or the welfare of others or of the community, he requires care, treatment, detention, or training, or to an extent which renders him incapable of caring for or managing his own estate". A mentally defective or mentally deficient person is defined as "a person whose mental abilities have been defective or arrested before birth or at birth, or whose mental development has been arrested by disease or physical injury occurring at an early age, in either case to such an extent that he lacks sufficient control, judgment and discretion to

*Involuntary Commitment*

Proceedings for the involuntary hospitalization of an individual may be commenced by the filing of a written application with the probate court by a friend, relative, spouse, or guardian of the individual, or the superintendent of any public or private institution in which such individual may be.<sup>12</sup> The application shall be accompanied by a certificate of a licensed physician stating that he has examined the individual and is of the opinion that he is mentally ill and should be hospitalized, or a written statement by the applicant that the individual has refused to submit to an examination by a licensed physician.<sup>13</sup>

Upon receipt of an application the court shall give notice thereof to the proposed patient, to his legal guardian, if any, and to his next of kin. If, however, the court has reason to believe that notice would be likely to be injurious to the proposed patient, notice to him may be omitted.<sup>14</sup> As soon as practicable after notice of the commencement of the proceedings is given or it is determined that notice should be omitted, the court shall appoint two designated examiners to examine the proposed patient and report to the court their findings as to his mental condition, and his need for custody, care, or treatment in a hospital.<sup>15</sup> The examination shall be held at a suitable place not likely to have a harmful effect upon the proposed patient's health.<sup>16</sup> A proposed patient to whom notice of the commencement of the proceedings has been omitted shall not be required to submit to an examination against his will. On the report of the examiners of refusal to submit to examination the court shall give notice to the proposed patient, as provided above, and order him to submit to examination.<sup>17</sup> If the report of the examiners is to the effect that they are of the opinion the patient is mentally ill, the court shall forthwith fix a date and give notice of a hearing to be held not less than ten nor more than fifteen days from receipt of the report. If the report of the examiners is divided or is to the effect that they are of the opinion the proposed patient is not mentally ill, the court shall terminate the proceedings and dismiss the application.<sup>18</sup> If, upon completion of the hearing and consideration of the record, the court

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manage himself or his affairs or who by reason of this deficiency, for his own welfare or the welfare of others, or of the community, requires supervision, guidance, care, or control."

12. (R905, H1775), Art. II, § 6(a).

13. *Ibid.*

14. *Ibid.*, § 6(b).

15. *Ibid.*, § 6(c).

16. *Ibid.*, § 6(d).

17. *Ibid.*

18. *Ibid.*, § 6(e).

finds that the proposed patient is mentally ill, and (1) is in need of custody, care, or treatment in a hospital, and because of his condition lacks sufficient insight or capacity to make responsible decisions with respect to his admittance to a hospital, or, (2) because of his condition is likely to injure others or himself, it shall order his hospitalization; otherwise, it shall dismiss the proceedings.<sup>19</sup> The petitioner or any other interested person standing within the family relationship of the proposed patient may appeal from the order of the probate court to the court of common pleas of the county, and a new trial shall be had de novo with a jury in the same manner as at trial of civil actions.<sup>20</sup>

The proceedings before a probate judge for commitment under the old law, and which the above proceedings supercede, are to the effect that when a relative or friend is desirous of placing a person in the State Hospital as a patient, he shall apply to the judge of probate of the county in which such person resides and make an affidavit in the manner and form required by the Board of Regents.<sup>21</sup> The judge of probate would then investigate the case, summoning two duly licensed physicians to examine the person, who would, under oath, fill out and sign the medical certificate of insanity, and, if such physicians would agree that the person's mental condition was such as to necessitate commitment to the State Hospital, the judge of probate would cite the alleged insane person, his guardian or nearest relative, and, in the judge's discretion, such other persons as would be competent to testify as to the mental condition of such person. After a full hearing and determination, if, in the opinion of the probate judge, the person was insane and a fit person to be committed to the State Hospital, the judge would then complete the papers required by the Board of Regents and immediately forward them to the superintendent for his approval.<sup>22</sup>

It will be seen that the main distinctions between these two procedures are the provision for notice and the provision for appeal provided for under the new law. In all respects the new procedure is broader and more definite in its terms. Nowhere among the old statutes are there provisions for rehearings and periodic examina-

19. *Ibid.*, § 6(g) — All persons to whom notice is required to be given may appear at the hearing, testify, and present and cross examine witnesses. The hearings shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the proposed patient. An opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither he nor others provide counsel, the court shall appoint counsel for him.

20. *Ibid.*, § 6(j).

21. S. C. CODE § 32-961 (1952). The Board of Regents has been replaced by the South Carolina Mental Health Commission.

22. *Ibid.*

tions. The new law provides that a patient involuntarily confined shall be entitled to a re-examination of the order of his confinement on his own petition, or the petition of one standing in relationship, to the probate court of the county from which he was admitted.<sup>23</sup> Every patient or trainee shall be examined by a member of the staff of the institution promptly after his admission and shall be examined by the full medical staff within thirty days after admission.<sup>24</sup> The superintendent shall as frequently as practicable, but not less often than twelve months, examine or cause to be examined every patient or trainee, and whenever he determines that the conditions justifying involuntary confinement no longer obtain, he shall immediately make a report thereof to the commission and the commission may discharge the person.<sup>25</sup> Another provision found in the new law, but not specifically provided for in the old, is that any individual detained shall be entitled to the writ of habeas corpus upon proper petition.<sup>26</sup>

#### *Emergency Commitment*

Any individual may, subject to the availability of suitable accommodations, be admitted to a state hospital upon: (1) written application to the hospital by any person stating his belief that the individual is likely to cause injury to himself or others if not immediately restrained, and the grounds for his belief; and (2) a certificate by at least one licensed physician that he has examined the individual and is of the opinion that the individual is mentally ill and, because of his condition, is likely to injure himself or others if not immediately restrained.<sup>27</sup> This certificate shall authorize any police officer, preferably in civilian clothes, to take the individual into custody and transport him to the hospital designated in the application.<sup>28</sup> Within forty-eight hours after taking the individual into custody the police officer shall obtain an endorsement of the certificate by the judge of probate of the county in which the individual is taken into custody.<sup>29</sup> If the judge of probate refuses to endorse the certificate he shall state thereon his reasons for his refusal and immediately transmit it to the hospital concerned, and the hospital shall discharge the pa-

23. (R905, H1775), Art. II, § 10.

24. *Ibid.*, Art. IV, § 3.— This provision applies to all patients no matter how admitted. There is no similar provision in the 1952 Code.

25. *Ibid.*, Art. IV, § 5.

26. Although not specifically provided for before, procuring a writ of habeas corpus has been a frequent procedure to obtain the release of a patient.

27. (R905, H1775), Art. II, § 5.

28. *Ibid.*

29. *Ibid.*

tient immediately.<sup>30</sup> There is also a non-emergency provision in the statute whereby an individual may be admitted to a state hospital upon written application to the hospital by a friend, relative, spouse, custodian, or guardian of the individual and a certificate by two designated examiners that they have jointly examined the individual and that they are of the opinion that he is mentally ill; and (1) is in need of care and treatment in a hospital and because of his condition, lacks sufficient insight or capacity to make responsible application therefor, or (2) because of his condition is likely to injure himself or others.<sup>31</sup> This certificate, if it states a belief that the individual is likely to injure himself or others, shall, upon endorsement of a judge of any probate court of the county in which the individual is resident or present, authorize a police officer to take the individual into custody and transport him to the hospital designated in the application.<sup>32</sup> When a patient has been admitted to a hospital under the above two procedures on the application of a person other than the patient's legal guardian, spouse, or next of kin, the superintendent of the hospital shall promptly notify the patient's legal guardian, spouse, or next of kin, if known.<sup>33</sup> Any patient so confined, who requests to be discharged or whose discharge is requested, shall be discharged within seven days after receipt of the request. But upon application to the probate court, supported by a certification by the superintendent of the hospital that in his opinion discharge would be unsafe for the patient or for others, discharge may be postponed for a period not to exceed fifteen days. Such postponement is that which the court deems necessary for the commencement of proceedings for a judicial determination pursuant to Section 6 of the statute.<sup>34</sup>

The previous provision for emergency commitment was indefinite in its terms and inadequate in its coverage. It provides that the superintendent may, without an order of the judge of probate, receive in his custody and detain in the hospital for not more than ten days any person whose case is certified by two regularly licensed physicians to be one of violent and dangerous insanity, or who for other reasons is in urgent need of treatment.<sup>35</sup> There is no provision for continued involuntary detention if necessary, no provision for notice to next of kin, and absolutely no provision for commitment similar

30. *Ibid.*— Discharge may be temporarily suspended if the superintendent forthwith files the certificate to initiate action provided for in § 3.

31. *Ibid.*, Art. II, § 4.

32. *Ibid.*

33. *Ibid.*, Art. II, § 8.

34. *Ibid.*, Art. II, § 9.

35. S. C. CODES § 32-958 (1952).

to the alternate procedure provided for in the new law in a situation which might be deemed less than an emergency but one demanding immediate attention.

### *Voluntary Commitment*

The superintendent of a state hospital shall admit for observation, diagnosis, care or treatment any individual who is: (1) mentally ill or has symptoms of mental illness and who, being twenty-one years of age or over, applies therefor, or (2) mentally ill or has symptoms of mental illness and is under twenty-one years of age, if his parent or legal guardian applies therefor in his behalf.<sup>36</sup> The superintendent of a hospital shall discharge any voluntary patient who has recovered or whose detention he determines to be no longer advisable.<sup>37</sup> A voluntary patient who requests his discharge, or whose discharge is requested, shall be discharged forthwith except that: (1) any request for discharge may be denied by the superintendent if the request is made sooner than thirty days after admission; (2) if the patient was admitted on his own application and the request for discharge is made by a person other than the patient, discharge may be conditioned upon the agreement of the patient thereto; (3) if the patient, by reason of his age was admitted on the application of another person, his discharge, prior to becoming twenty-one years of age, may be conditioned upon the consent of his parent or guardian; (4) if the superintendent of the hospital, within seven days from the receipt of the request, files with the probate court a certification that, in his opinion, the discharge of the patient would be unsafe for the patient or others, discharge may be postponed on application for as long as the court determines to be necessary for the commencement of proceedings for judicial determination, but in no event for more than fifteen days.<sup>38</sup>

The provision under the old law provides for voluntary commitments in two sentences. The superintendent may, in his discretion, receive and detain in the hospital as a patient any person who is desirous of submitting himself for treatment, who voluntarily makes written application therefor and whose mental condition, in the opinion of the superintendent, is such as to render him competent to make the application.<sup>39</sup> Such patient shall not be detained for more than ten days after having given notice in writing of his intention or de-

36. (R905, H1775), Art. II, § 1.

37. *Ibid.*, Art. II, § 2.

38. *Ibid.*, Art. II, § 3.

39. S. C. CODE § 32-959 (1952).



sire to leave the Hospital.<sup>40</sup> Again there is no provision for involuntary detention if necessary. There is no provision for discharge in the superintendent's discretion. Restricting voluntary commitments only to those who are competent to apply therefor considerably narrows the applicability of this procedure and leaves many who should be subjects for voluntary commitment to the procedure before a probate judge for judicial determination.

#### *Commitment from the Circuit Court*

There has been no substantial change in the law relating to the commitment of a person charged with crime. Any judge of the circuit court may order admitted to the State Hospital any person charged with the commission of any criminal offense who shall, upon the trial before him, be adjudged mentally ill, or as to whom there is a question of the relation of mental illness to the alleged crime.<sup>41</sup> At the end of thirty days the person shall be returned to the court if found mentally competent, or if he is found mentally ill, then the superintendent of the hospital shall retain the person as a patient subject to the further orders of the court.<sup>42</sup>

#### *Conditional Discharge*

The superintendent of a state hospital with the approval of the commission, may conditionally discharge an improved patient on the condition that he receive out-patient treatment<sup>43</sup> or on other reasonable conditions specified by the commission. Whenever conditional discharge of a patient has extended beyond one year, the superintendent of the institution shall re-examine the facts relating to confinement of the patient and, if he determines that in view of the condition of the patient confinement is no longer justified, he shall make an immediate report to the commission and the commission may discharge the patient.<sup>44</sup> The former law on conditional discharge has been little changed by the above provisions except that such a parole could be obtained only at the request of relatives or friends.<sup>45</sup> Also there was no provision for immediate reconfinement. Under the present provisions, the commission may issue an order for the im-

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40. *Ibid.*

41. (R905, H1775), Art. II, § 7.

42. *Ibid.*

43. *Ibid.*, Art. IV, § 6.—Mental hygiene clinics have been set up in three locations throughout the state.

44. *Ibid.*

45. S. C. CODE § 32-977 (1952).

mediate recommitment of a conditionally discharged patient who has failed to fulfill the conditions of his discharge.<sup>46</sup>

### *Conclusion*

There are other instances in which the law in this state on mental health has been changed and expanded; matters such as the transportation of patients,<sup>47</sup> communication with patients,<sup>48</sup> keeping of patients' records and confidential papers,<sup>49</sup> have been dealt with more explicitly under the new law. Considering the new law in its entirety, it is found to be in every respect more complete in its coverage and more definite in its terms. It is set out so as to provide workable mental health laws, not only from the standpoint of efficient operation, but also with a view toward minimizing an adverse psychological effect on prospective patients. The age-old problem of balancing an individual's personal liberty against the good of the community has not had its delicate position disturbed. If anything, the needs and rights of both have been strengthened by a new flexibility and an understanding of the problem in the eyes of the law.

The new mental health code is the result of extensive work and considered thought on the part of those interested persons representing the views of the doctor, minister, and the lawmaker. There has been little time for the new provisions to prove themselves through operation, but they are based largely upon the laws of other jurisdictions that have so proved themselves. In combating the mental health problem in this State, much remains to be done,<sup>50</sup> but South Carolina is now equipped with adequate and progressive mental health laws.

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46. (R905, H1775), Art. II, § 7.

47. *Ibid.*, Art. IV, § 2.

48. *Ibid.*, Art. IV, § 7.

49. *Ibid.*, Art. IV, § 9.

50. However, from 1941 to 1951, biennial appropriations for the State Hospital had increased from \$1,317,250 to \$3,660,310, and an extensive building program is underway. Hospital facilities have been inadequate and understaffed.