

1981 WL 158195 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 19, 1981

\*1 The Honorable Patsy S. Stone  
Judge of Probate  
Florence County  
Post Office Box 965  
Florence, South Carolina 29501

Dear Judge Stone:

You have recently asked the opinion of this Office regarding the duty of peace officers to transport patients who are hospitalized under the provisions of §§ 44-17-410, et seq., Code of Laws of South Carolina, (1976) as amended. You ask whether the peace officers have a duty to transport emergency patients who are hospitalized in one county but are residents of another county.

Both § 44-17-430 and § 44-17-440 place certain duties upon officers of the peace regarding hospitalization under this article. Section 44-17-430 reads as follows, in pertinent part:

Upon presentation of such an affidavit, the judge of probate for the county in which the individual is present may require any officer of the peace to take the individual into custody for a period not exceeding twenty-four hours during which detention he shall be examined by at least one licensed physician as provided for in § 44-17-410(2); provided, that the individual taken into custody shall have the right to representation by an attorney. [Emphasis added]

This Office has issued an earlier opinion interpreting the duties of peace officers under this statute, and I have enclosed a copy for your benefit.

Section 44-17-440 also seems clear in its mandate of the duty of transportation:

The certificate required by § 44-17-10(2) shall authorize and require any officer of the peace, preferably in civilian clothes, to take the individual into custody and transport him to the hospital designated by said certification; provided no person shall be taken into custody after the expiration of three days from the date of the certification. Any officer acting in accordance with the provisions of this article shall be immune from civil liability. [Emphasis added]

The word 'shall', when used in a statute, should be construed in a mandatory sense, in the absence of something in the statute showing a contrary intent on the part of the legislature. 1960-61 Op. Atty. Gen. 247.

Construing the statutes, it appears that the duty of peace officers extends to the transportation of emergency patients who are hospitalized under the provisions of §§ 44-17-410, et seq., even though the patients may be residents of another county.

Very truly yours,

Edwin E. Evans  
Assistant Attorney General

**ATTACHMENTS**

March 24, 1976  
Spartanburg County Police

Section 32-955, 32-957, 32-959 and 32-961, South Carolina Code of Laws, 1962, as amended.

**DISCUSSION:**

This inquiry involves the role of officers of the peace in mental health commitment matters. The question is whether an officer of the peace must stay with a proposed patient whom he has taken into custody pursuant to the Detention Order of the Probate Court.

The issuance of the Detention Order is pursuant to [South Carolina Code, Section 44-17-430 \(1962\)](#) as amended. In these circumstances, an individual who is believed likely to cause serious harm to himself or others because of mental illness, and who, for some reason cannot be examined by a licensed physician for purposes of an emergency admission pursuant to [South Carolina Code, Section 32-955 \(1962\)](#) as amended, may be taken into custody pursuant to the Order of the Probate Court for up to twenty-four hours in order to be so examined.

\*2 Section 32-937 provides:

If a person believed to be mentally ill and, because of his condition, likely to cause serious harm if not immediately hospitalized, cannot be examined by at least one licensed physician pursuant to Section 32-955 by reason of the fact that his whereabouts are unknown or for any other reason, the petitioner seeking commitment pursuant to Section 32-955 shall execute an affidavit stating that he believes the individual to be mentally ill and, because of his condition, likely to cause serious harm if not hospitalized and the ground for such belief, and stating that the usual procedure for examination cannot be followed and the reason therefor. Upon presentation of such an affidavit, the judge of probate for the county in which the individual is present may require any officer of the peace to take the individual into custody for a period not exceeding twenty-four hours during which detention he shall be examined by at least one licensed physician as provided for in Section 32-955(2), provided, that the individual taken into custody shall have the right to representation by an attorney. If within the twenty-four hours the person in custody is not examined by a Licensed physician or, if upon examination, the physician does not execute the certification provided for in Section 32-955(2), the proceedings shall be terminated and the individual in custody shall be immediately released. Otherwise proceedings shall be held pursuant to Section 32-955(3). (Emphasis Added)

This code section and the other code sections relating to emergency admissions are predicated on the police power of the sovereign to protect the public from danger. Hence the types of proposed patients that are subject to these code sections are persons not merely believed to be mentally ill, but also as a result of this condition 'likely to cause serious harm, if not immediately hospitalized.'

Peace officers into whose custody these persons come have a duty implied by their office to insure that such individuals do not indeed cause serious harm to themselves or others. Furthermore, the language in Code Section 32-957 to which emphasis has been supplied is clear that the legislature intended that such persons remain in the physical custody of peace officers until some disposition is made.

However, the officer should not interfere with the examination. Thus, if a physician feels that he can safely conduct the examination without the security the officer could provide, and that for the purposes of conducting a meaningful examination, he would like the officer not be present, the circumstances would warrant the officer merely making himself available at the time the examination has been completed. The medical decision that has then been reached as to whether to cause the individual to be admitted on an emergency basis to a hospital for the mentally ill, or to be released would dictate the officer's conduct thereafter.

**CONCLUSION:**

\*3 Therefore, it is the opinion of this Office that peace officers who take custody of individuals pursuant to [South Carolina Code, Section 32-957](#) have the duty to maintain that custody until the individual is either admitted to the hospital or released

by virtue of a finding of nondangerousness by the physician, or by the expiration of twenty-four hours with no action. This Office is aware that there may be occasions when persons who are taken into custody pursuant to Section 32-957 are not in fact dangerous, and do not pose a threat to themselves or others. However, determining when such is the case is a task best left to members of the medical profession, who will make the judgment whether to certify an individual for emergency admission.

Harry B. Burchstead, Jr.  
Assistant Attorney General

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