

1979 WL 43137 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 26, 1979

**\*1 RE: Authority of the Probate Court to Civilly**

The Honorable James R. Metts  
Sheriff  
Lexington County  
521 Gibson Road  
Lexington, South Carolina 29072  
Commit a Minor

Dear Sheriff Metts:

I am writing in response to your letter of October 8, 1979, concerning the above. In your letter you asked whether the Probate Court possesses jurisdiction to order the civil commitment of a minor under the age of seventeen (17) years to a mental institution. While the jurisdictions of the Family Court and the Probate Court overlap to some extent in this area, it is the opinion of this Office that the Probate Court possesses jurisdiction over a minor for the purposes of civil commitment.

Civil commitment to a mental hospital is strictly a creature of statute. [In Re Cogdell's Estate, 236 S.C. 404, 141 S.E.2d 562](#). The statutory commitment processes are found in §§ 44-17-110 *et seq.*, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended. These proceedings place civil commitment within the jurisdiction of the Probate Courts of South Carolina. Said sections make no distinction between civil commitment of adults and minors and there appear to be no civil commitment procedures specifically applicable to minors. Thus, it would appear that the legislature intended the statutory commitment procedures in the Probate Court to be applicable to minors as well as adults.

Further support for this conclusion is found in the jurisdictional provisions of the Probate Court and the Family Court. [Section 14-23-1150, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, speaks to the jurisdiction of the Probate Court. It reads in pertinent part:

Every Judge of Probate, in his County, shall have jurisdiction:

(e) To inquire into and adjudge, in such proceedings as may be authorized by law, the involuntary commitment of persons suffering from mental illness, mental retardation, . . . [emphasis added]

While [Section 14-21-510\(2\) of the Code](#) authorizes the Family Court to initiate action for the treatment or commitment of a mentally defective or emotionally disturbed child, said section further states ‘. . . that nothing herein is intended to conflict with the authority of the probate courts in dealing with mental cases.’

In view of the above, it is the opinion of this Office that the Probate Court possesses jurisdiction over a minor for the purposes of civil commitment to a mental institution.

Very truly yours,

Edwin E. Evans  
Assistant Attorney General

1979 WL 43137 (S.C.A.G.)

---

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.