

1978 WL 34882 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 1, 1978

**\*1 RE: Opinion request § 44-23-220**

Honorable Capers G. Barr, III  
Solicitor  
Ninth Judicial Circuit  
Charleston County Courthouse  
Charleston, South Carolina 29401

Dear Capers:

Your letter addressed to the Attorney General concerning the above has been forwarded to me for reply. In said letter, you requested an opinion as to whether or not § 44-23-220 would ban the Sheriff of Charleston County from receiving at his jail a person who has been arrested in a lawful manner, and who is suspected of being mentally ill or mentally retarded. The opinion of this Office is that it would not.

Act 1158 of 1974, of which § 44-23-220 was a part, contained a comprehensive scheme for the commitment of individuals to appropriate mental health or mental retardation facilities. When the section is analyzed with other sections pertaining to similar subject matter, as it must be, [Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376](#), its purpose becomes amplified. Act 1158 purported to cover every situation wherein an individual in need of involuntary treatment and commitment could be placed in an appropriate facility. Section 44-23-210(2) provides a mechanism for the transfer to an appropriate treatment facility persons confined within the Department of Corrections. Section 44-23-220 provides the transfer mechanism for individuals confined in local or county jails. In addition, it provides a procedure to assist the jailer in making the determination of whether or not commitment to a mental health or mental retardation facility is warranted.

Section 44-23-220 appears to apply to all individuals confined in local or county jails. That is, if a confined individual needs commitment and treatment then it should be sought, regardless of the confined individual's status. This would appear to reflect the legislative purpose to provide procedures to insure judicial commitments of persons confined who need to be in treatment facilities. See § 55-411.1 of the Code of Laws of South Carolina, 1962. Said section applies only to persons in confinement, it does not speak to the jail or jailer's responsibility prior or subsequent to confinement. Analyze by way of comparison § 44-13-10 which prohibits, except in extreme emergency, the confinement of individuals in a jail who are detained solely for commitment purposes.

In conclusion, it appears that § 44-23-220 is applicable to all individuals confined in local or county jails. The section does not prohibit the initial confinement of individuals suspected to be mentally ill or retarded, but directs the jailer to act in a certain manner if it appears to him that an individual confined in his jail is either mentally ill or retarded. I would advise that you inquire of the county attorney the inquiry regarding the county jail's duty to accept a person suspected of being mentally ill or mentally retarded who has been lawfully arrested, in that the answer would be controlled by local ordinances governing the operation of the jail.

**\*2** If this Office can be of further assistance, please advise.

I remain,  
Very truly yours,

Edwin E. Evans  
Assistant Attorney General

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