

1975 S.C. Op. Atty. Gen. 37 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3966, 1975 WL 22264

Office of the Attorney General

State of South Carolina

Opinion No. 3966

February 10, 1975

***1 Re: Removal of Individuals in local County Jails to the Department of Mental Health**

The Honorable Carl M. Hair
Judge of Probate
Aiken County Courthouse
Aiken, South Carolina 29801

Dear Judge Hair:

I am writing concerning the issues involved when an individual is confined in a county or city jail and is thought to be mentally ill and because of this condition is likely to cause serious harm. Pursuant to Section 32-975 of the new Mental Health Law and Sections 55-411.1 and 32-1015 of the South Carolina Code of Laws, a mentally ill individual should not be detained in jail. Therefore, an individual that falls within the category specified above should be discharged from a jail if he or she is so detained and placed in an institute for the mentally ill.

There appears to be at least two ways of accomplishing this goal under the present Mental Health Law. Section 32-975 of the new Mental Health Law provides for this transfer to a Mental Health facility by using the Section 32-959, *et seq.* admission procedures. After the initial examiners determine the individual needs treatment in a hospital, and the petition is duly filed, then the individual may be immediately transferred to a facility within the Department of Mental Health. The individual could be held in the hospital throughout the commitment proceedings and pending the commitment hearing. This procedure should only be used, however, when the individual detained in the jail is being detained for a period of time which is necessarily longer than it would take to complete the full Section 32-959 commitment procedure, as he or she will be hospitalized throughout the procedure. If the individual is being detained in jail for some shorter period of time, an immediate transfer should not be effected with this procedure. If immediate hospitalization is not thought to be necessary, and the individual is detained in jail for only a short period of time, then the Section 32-959, *et seq.* procedures should be followed, but the individual should not be hospitalized until the final Order is delivered after the hearing.

A second method of having a person immediately removed from a local jail and placed in a facility for the mentally ill is by having some individual at the jail such as the jailer or some member of the Sheriff's department, begin the emergency admission procedure pursuant to Section 32-955, *et seq.* of the new act by becoming the applicant. Of course, this procedure could not be used if the individual did not fit the definition of Section 32-911(2) of the new act and a doctor did not certify this fact. This second method would be used to effect an immediate admission of an individual to a facility for the Mentally ill and its use is not limited according to the length of time the individual is to be detained in the jail.

I hope these guidelines will be of some assistance to you in the future. Fee free to contact this office if questions arise on this matter.

*2 With kind regards, I remain
Very truly yours,

Edwin E. Evans
Staff Attorney

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