

1975 WL 174059 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 13, 1975

*1 Honorable William R. Hare
Solicitor
Sixth Judicial Circuit
P.O. Box 838
Chester, South Carolina 29706

Dear Mr. Hare:

Your letter of inquiry to the Attorney General dated May 5, 1975, has been referred to me for reply. In it you presented two questions.

1. Who should petition the Probate Court for the judicial admission of a person found unfit to stand trial on criminal charges because of mental illness?
2. Does the Petitioner have to be present in the Probate Court during judicial admission proceedings?

As to your first question, it is the opinion of this Office that the Solicitor in his official capacity is to be the petitioner. Section 32-979(2) and (3), CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended, each provide that following a finding of unfitness to stand trial, “the solicitor responsible for the criminal prosecution shall initiate judicial admission proceedings pursuant to Sections 32-959 through 32-969 or Section 8 of Act No. 1070 of 1970” (Emphasis added). Although neither Section 32-959 nor Section 8 of Act No. 1070 of 1970 include the Solicitor in the class of permissible petitioners, these sections speak generally of proposed patients not involved in the criminal process, and Section 32-979 is sufficiently clear to expand this class to include the Solicitor under the special conditions outlined within Section 32-979.

This is further amplified in that Section 32-979 was based on the U. S. Supreme Court's mandate in [Jackson v. Indiana](#), 406 U.S. 715 (1972) in which the Court held that “a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than a reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceedings or release the defendant.” [Emphasis added] ([Supra at 738](#)) Therefore, legislative intent in Section 32-979 is viewed as making the State a party to these types of judicial admissions through the office of the Solicitor.

Accordingly, it is the opinion of this Office that the Solicitor does not initiate the petition by simply lining up a petitioner, but rather by filing the petition. Otherwise, the Solicitor would be unable to compel the filing of timely petitions having to rely on public officials or private citizens beyond his control.

As to your second question, you stated that you were unable to see where it is required that the Petitioner be present at any of the hearings. You are correct that he does not have to be present, and, as in most court proceedings, representation of the parties through counsel is sufficient.

I will insure that the registrars of the two state hospitals are informed of the contents of this letter. I trust that this answers your inquiry, if not, please correspond.

*2 With best wishes, I am
Very truly yours,

Harry B. Burchstead, Jr.
Staff Attorney

1975 WL 174059 (S.C.A.G.)

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.