

1974 WL 27977 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
September 27, 1974

*1 Honorable Thomas E. Smith, Jr.
Senator
Senatorial District No. L1
100 Walnut Street
Pamplico, South Carolina 29583

Dear Senator Smith:

Your letter of inquiry on Act No. 1158, (R-1350, S-539), the Mental Health Commitment Law, has been referred to me by Mr. Halford, as I now am devoting full time to the implementation of this act.

Unfortunately, during the legislative history of the act many section numbers were reassigned, while the cross-references were overlooked and not changed accordingly. You are correct in questioning these section references:

1. Section 32-982 refers to Section 32-972 on lines 2 and 10, it should be Section 32-979.
2. Section 32-983 refers to Section 32-972 on line 6, it should also be Section 32-979.
3. Section 32-979 refers to Section 32-975 in the next-to-the-end paragraph, it should refer to Section 32-983.

You inquired into the purpose of Section 32-991. The reason that this Section was included relates to Sections 32-967 and 32-997. The effect of these sections is to prevent the status of incompetency attaching ipso facto to the status of being a patient. In accord with this, no change in his legal status should follow a statistical discharge.

As to your question on the purpose of according the patients against when criminal charges are pending the same rights and privileges of other involuntary patients, I submit that [Jackson v. Indiana](#), 406 U.S. 715, 32 L. Ed. 2d 435, 92 S. Ct. 1845 (1972) requires it. Persons found unfit to stand trial are not criminals and cannot constitutionally be placed in more restrictive surrounding than other involuntarily hospitalized patients. See also [Gomez v. Miller](#), 337 F. Supp. 386 (S.D.N.Y. 1971), [Baxtrom v. Herald](#), 383 U.S. 107 (1966) and [United States, ex rel. Schuster v. Herald](#), 410 F. 2d 1071 (2d Cir. 1969).

As to the inquiry into what rights does a mental patient have, these rights were incorporated into Section 32-994, through Section 32-1000 on the basis of several different court decisions and other states' laws.

Enclosed please find the 'Memo on Current Mental Hospital Decisions which covers most of the decisions on patient rights. Of particular note is [Wyatt v. Strickney](#), 344 F. Supp. 373 (M.D. Ala. 1972), which was influential in the drafting of our code sections. Section 32-997 was modeled after the District of Columbia statute, which was the result of many factors, but no one court decision, as best I can determine.

Finally, you inquired into the necessity of the last paragraph of Section 32-978. This was not included in the original draft, but, as best I can determine, added during the Judiciary Committee hearings to prevent the disclosure of the defense of insanity at the time of the crime.

I have enclosed a copy of R-1350 with other pen and ink corrections that we have uncovered. We appreciate your letter particularly since the misreference in Section 32-979 was one that we had not caught, and we will appreciate any other letters on other errors you uncover.

*2 The errors that are clerical in nature are being corrected by Mr. James Bryan of the Legislative Council as we uncover them. However, there are several technical amendments we feel are necessary, and I will send you a copy of our proposals as soon as these are finalized.

We appreciate your continuing interest. I hope this letter will adequately answer your inquiries. If not, please feel free to contact me again.

Sincerely,

Harry B. Burchstead, Jr.
Legal Assistant

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