

1983 WL 181786 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 9, 1983

*1 Harry W. Davis, Jr.
Commissioner
S.C. Department of Youth Services
P. O. Box 7367
Columbia, S.C. 29202

Dear Mr. Davis:

You have recently asked the opinion of this office regarding the following two questions:

1. What agency of State government has the authority and responsibility to conduct an evaluation of a juvenile to determine competency to stand trial, and may such juveniles be sent to the Reception and Evaluation Center of the Department of Youth Services for such an evaluation?

If a Judge of the Circuit Court, County Court, or Family Court has reason to believe that a person on trial before him, charged with the commission of a criminal offense, is not fit to stand trial because such person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, it is the duty of the judge to order examination of such person by two examiners designated by the Department of Mental Health or the Mental Retardation Department or both, within fifteen (15) days of the order, or order such person committed for examination and observation to an appropriate facility for a period not to exceed fifteen (15) days. [Section 44-23-410 Code of Laws of South Carolina \(1976\)](#). It is the opinion of this office that the term 'appropriate facility' is any hospital clinic, or other institution maintained by the State for the care and treatment of persons who have psychiatric illnesses. See [§ 44-23-10\(14\), Code of Laws of South Carolina \(1976\)](#). By clear statutory exclusion, any facility of the Department of Youth Services is not such a facility because no seriously handicapped person by mental illness shall be committed to any institution under the control of the Department of Youth Services. [§ 20-7-3310, Code of Laws of South Carolina \(1976\)](#).

It is the opinion of this office that the Department of Mental Health and/or the Mental Retardation Department, upon order of the Court, have the responsibility to conduct an evaluation of a juvenile and it is the responsibility of the Judge to determine the competency of the juvenile to stand trial. Juveniles may not be sent to the Reception and Evaluation Center of the Department of Youth Services for an evaluation to determine competency to stand trial under [§ 44-23-410, Code of Laws of South Carolina \(1976\)](#).

Sincerely,

Arlene D. Hand
Staff Attorney

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