

1979 WL 42977 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 3, 1979

*1 Honorable Marguerite S. Kinard
Probate Judge for Colleton County
P.O. Box 463
Walterboro, South Carolina 29483

Dear Judge Kinard:

You have asked this Office whether an individual who has been committed to the South Carolina State Hospital pursuant to an emergency admission ([§ 44-17-410, Code of Laws for South Carolina, 1976](#), as amended) may be detained in a County jail prior to his transportation to the South Carolina State Hospital. It is the opinion of this Office that such detention should be avoided except in extreme emergencies.

Perusal of the general laws relative to the mentally ill and mentally retarded indicate without doubt the Legislature's intention to provide treatment for these individuals. Two sections of the Code expressly indicate the intent of the Legislature with regards to detention of the mentally ill in jails. [Section 44-23-220 Code of Laws of South Carolina, 1976](#), generally prohibits continued detention of a mentally ill individual in a jail who is in need of hospitalization. The section further provides a procedure for commitment to an appropriate institution. [Section 44-13-10 of the South Carolina Code](#), appears to answer directly the question you raise. It reads in part as follows:

Pending his removal to a State Mental Health facility an individual taken into custody or ordered to be admitted may be temporarily detained in his home, a licensed foster home or any other suitable facility under such reasonable conditions as the county governing body, supervisor or manager may fix, but he shall not, except because of and during an extreme emergency be detained in a nonmedical establishment used for the detention of individuals charged with or convicted of penal offenses. (Emphasis added).

Thus, it is clear that absent extreme emergency, an individual awaiting transportation to the South Carolina State Hospital should not be detained in a jail. If this Office can be of further service, please feel free to call on us.

I remain,
Very truly yours,

Edwin E. Evans
Assistant Attorney General

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