

1975 WL 29528 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 24, 1975

**\*1 Re: Safekeeping**

The Honorable James B. Edwards  
Governor  
The State of South Carolina  
State House  
P. O. Box 11450  
Columbia, South Carolina 29211

Dear Governor Edwards:

As you are aware by previous correspondence from William D. Leeke, Section 55-325, Code of Laws of South Carolina, 1962, provides for the transfer of county prisoners awaiting trial to the Department of Corrections for safekeeping on your order as Governor. It has come to my attention that the policies regarding these transfers are in need of review.

On January 5, 1975, Act No. 1158 of 1974 took effect. Among its provisions are an amended Section 32-975, which reads: 'Admission of Persons in Jail.—No person who is mentally ill or mentally retarded shall be confined for safekeeping in jail. If it appears to the officer in charge of the jail that such a person is in prison, he shall immediately cause the person to be examined by two examiners designated by the Department of Mental Health or the Department of Mental Retardation or both, and if in their opinion admission to a mental health or retardation facility is warranted, the officer in charge of the jail shall commence proceedings pursuant to Sections 32-959 through 32-969, or Section 8 of Act No. 1070 of 1970. If hospitalization is ordered the person shall be discharged from the custody of the officer in charge of the jail and shall be admitted to an appropriate mental health or retardation facility.' (emphasis added)

Obviously, this legislation prohibits the transfers of those prisoners who are mentally ill to the Department of Corrections, providing instead for their transfer to the Department of Mental Health.

State officials also face potential liability in Federal Court for violating the Civil Rights of 'safekeepers'. Many of these unconvicted individuals usually enjoy less privileges than their convicted counterparts within the Central Correctional Institute. This in itself raises serious Constitutional questions under the 14th Amendment.

With these problems in mind I would offer the services of this office to assist you and your representatives in formulating new policies regarding transfers for safekeeping. I would also suggest that representatives of the Department of Corrections be involved.

Your interest and attention are appreciated.

With warmest personal regards, I am  
Very truly yours,

Daniel R. McLeod  
Attorney General

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