

1975 WL 174053 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 11, 1975

Re: H-2036

*1 Honorable Norma C. Russell

House of Representatives

State House

Columbia, South Carolina

Dear Representative Russell:

This is in response to the questions presented verbally to this Office relating to the above pending bill.

The issue of invasion of privacy is the question most obvious upon a reading of the entire bill. However, the information required to be released under Section 1 is not released to the public-at-large, but to certain specified law enforcement officials. There is no mandate in the bill that this information is to remain confidential in the hands of the law enforcement officials. Because of the nature of the information released, and the reasons for said release, in the opinion of this Office H-2036 is not per se an unconstitutional invasion of privacy.

A second constitutional issue that presents itself is the fact that the report of escape or departure without permission and subsequent pick-up is made in all such cases without regard to the mental condition of the individual or his dangerousness or likelihood to commit harm. This broad mandate would require that an individual who may not be dangerous or may not even warrant continued hospitalization be picked up and returned to an institution solely because he or she has left without consent. This presents a constitutional issue since pursuant to [Donaldson v. O'Connor](#), 493 F. 2d 507, No. 74-8, U.S. Supreme Court Docket (1974), and [Wyatt v. Aderholt](#), 503 F. 2d 1305 (1974), the justification for detention of an individual in an institution for the mentally ill must be premised on a need for treatment. Therefore, if the individual is picked up and returned to the hospital solely because of his or her "escape", and not because the conditions which warranted initial hospitalization continue to exist, then this would possibly be an unconstitutional deprivation of freedom. The proposed bill is constitutionally questionable as it applies to patients of the Department of Mental Health or the Department of Mental Retardation who may no longer need hospitalization.

Additionally, I wish to comment on the workability of H-2036 in light of several statutory confidentiality sections of the South Carolina Code of Laws. Section 32-1022, South Carolina Code of Laws (1962), as amended, applies to the Department of Mental Health and patients and former patients under its jurisdiction. This section imposes criminal sanctions upon individuals who are violative of this provision. H-2036 does not per se repeal this section although in many instances a release of information under the proposed bill would be violative of Section 32-1022. An example of this would be where a nondangerous mentally ill individual, detained at the State Hospital, left the grounds of the hospital without permission. This individual would fall within the scope of H-2036, although Section 32-1022 would require that confidentiality be maintained under penalty of law, and the proposed bill would require the information be released under penalty of law. The Department of Mental Retardation and its records which identify patients are protected by Section 32-927.41, South Carolina Code of Laws (1962), as amended. This statute has no exception for many of the situations that may arise within the scope of the proposed bill. The alcohol and drug addict is also protected by a confidentiality statute, Section 32-995.18, South Carolina Code of Laws (1962), as amended.

*2 The Department of Mental Health and the Department of Mental Retardation presently have statutory procedures for the immediate reconfinement of patients who have left without permission. Sections 32-987, 32-990, 32-927.34, South Carolina Code of Laws (1962), as amended. These sections provide for reconfinement if the reasons for hospitalization continue to exist.

In the opinion of this Office, H-2036 is not deemed to be unconstitutional. However, it does present serious problems violative of the confidentiality of records statutes providing protection to the mentally ill, the mentally retarded, and the alcohol and drug addict.

Very truly yours,

Raymond G. Halford
Assistant Attorney General

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