~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 30, 2022

**S. 79**

Introduced by Senator Malloy

S. Printed 3/30/22--S.

Read the first time January 12, 2021.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 79) to amend Section 44‑23‑430 of the 1976 Code, relating to hearings concerning a person’s fitness to stand trial, to extend the length of time certain persons unfit, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 2, by striking lines 22 and 23, as contained in SECTION 2, and inserting therein the following:

/ department has the discretion to provide the restoration treatment in a hospital or detention facility. Restoration treatment shall only occur in a detention facility with the consent and approval of the sheriff or local government, whichever has lawful custody of the detention facility. If the person is on bond, then the /

Amend the bill further, as and if amended, beginning on page 2, by striking line 36 on page 2 through line 10 on page 3, as contained in SECTION 2, and inserting therein the following:

/ (C) Persons against whom criminal charges are pending but who are not involuntarily committed following judicial admission proceedings shall be released unless: (1) the person is charged with a violent crime or (2) the person is charged with a non-violent crime and the solicitor files a motion to require bond for release. If the pending charge is a violent crime, a hearing must be held by the court in which the charges are pending, prior to release, on the issue of whether the person shall be released on bond with terms and conditions appropriate for the safety of the community and the well‑being of the person. If the pending charge is a non-violent crime, and the solicitor files a motion to require bond for release, a hearing may be held by the court in which the charges are pending to determine whether the person poses such a risk of danger to the community that he must not be released without bond. In addition to any terms or conditions of bond allowed under Section 17-15-10, the court must include terms or conditions of bond that are therapeutic in nature. Therapeutic terms and conditions may include, but not be limited to, a requirement that the person cooperate in any treatment indicated for their psychiatric or intellectual impairments, including the keeping of scheduled appointments, the taking of all prescribed medications, the abstaining from alcohol or illegal drug use, and a requirement that the person comply with random or scheduled drug screens to insure sobriety and medication compliance. For purposes of this subsection, ‘violent crime’ means any offense included in Section 16‑1‑60.” /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill establishes restoration treatment as an option for individuals who are found unfit to stand trial, but who are likely to become fit in the foreseeable future. Currently, if an individual is found to be unfit to stand trial but likely to be fit in the foreseeable future, the individual is hospitalized for up to 60 days. After this 60-day period, if the individual is still found to be unfit to stand trial, the solicitor responsible for prosecution shall initiate judicial admission proceedings to have the individual involuntarily hospitalized. This bill will allow these individuals to undergo restoration treatment provided by DMH for up to 180 days. This bill also gives DMH the discretion to provide restoration treatment at a hospital or detention facility if an individual is detained, or in a hospital or outpatient basis if the individual is on bond.

**Department of Mental Health.** DMH uses a statewide network of community mental health centers, clinics, hospitals, and nursing homes to support the recovery of people with mental illness. This bill extends the period of restoration treatment from 60 days to 180 days. DMH estimates this will have an undetermined fiscal impact on the department. According to DMH, under normal operations prior to the COVID-19 pandemic, there were an average of thirty patients receiving restoration treatment at the department’s G. Werber Bryan Psychiatric Hospital. DMH indicates the cost to provide restoration treatment services at the department’s psychiatric hospital is approximately $650 per day per patient. Currently, when a patient completes the 60-day period for treatment and is found still unfit to stand trial, the patient is recommitted to DMH and treated in a separate section of the hospital devoted to long-term patients. DMH reports that between January 1, 2020, and February 1, 2021, 44 percent of patients who completed the 60-day treatment were found still unfit to stand trial. The average stay of long-term patients is 1,400 days. Based on their research, DMH estimates the proposed extension of the treatment period could reduce the current recommitment rate of 44 percent to 25 percent or lower, which could result in a reduction of 35 patient recommitments annually. DMH anticipates that over time the reduction in long-term patients will increase the capacity available for restoration treatment.

This bill gives DMH the discretion to provide restoration treatment for individuals who are detained in a hospital setting, detention facility, or out-patient basis, dependent upon the individual’s circumstances. While this is an expansion of DMH’s restoration treatment services, DMH indicates providing treatment in detention centers or on an out-patient basis would result in lower cost treatment compared to services provided at their psychiatric hospital and would also allow the department to more timely admit individuals requiring treatment in a hospital setting who are waiting for a bed. Based on information from other states, DMH estimates the cost to provide jail-based restoration treatment could range from $150 to $250 per patient per day. This cost per day estimate would provide for 2.5 FTEs including a part-time psychiatrist, a full-time psychologist, and a full-time social work counselor. This amount also includes an estimate for other operating expenses, such as overhead charged by the detention center for use of its space, security, and other medical services. DMH estimates program participation of 20 patients at a time for 365 days, resulting in 7,300 patient service days. Providing 7,300 patient service days at $150 per patient per day would cost $1,095,000 annually, while providing 7,300 patient service days at $250 per patient per day would cost $1,825,000 annually.

DMH estimates the cost to provide treatment in the community for individuals out on bond to be $100 per day, based on information from other states. This per day cost estimate would provide for 1.0 FTE including a part-time psychiatrist and a part-time psychologist. DMH estimates program participation of 10 patients at a time for a full year excluding weekends and holidays, or 250 days, resulting in 2,500 patient service days. Providing 2,500 patient service days at $100 per patient per day would cost $250,000 annually.

In summary, DMH estimates the cost to expand restoration treatment to include jail-based and community-based programs could increase general fund expenditures by as much as $2,075,000 annually beginning in FY 2022-23. As noted, increasing the treatment period from 60 days to 180 days could reduce the number of long-term patients treated by the department and increase the department’s capacity to provide restoration treatment. However, the fiscal impact of this shift in patients from treatment in inpatient facilities to a jail or community-based program cannot be determined at this time, and will depend on the treatment outcomes of patients. Therefore, the impact of all these changes to DMH’s responsibilities is undetermined. Additionally, DMH indicates this bill may have an expenditure impact to other or federal funds. DMH is working to provide additional information relative to this potential impact. We will update this response if additional information becomes available.

**Judicial.** The bill provides that a hearing shall be held to determine whether a person should be released on bond, the terms of which must be therapeutic in nature. Judicial indicates that implementation of the bill would cause a delay in general sessions courts. There is no data to estimate the number of filings, hearings, or trials that may be impacted. However, Judicial intends to use existing general fund resources to manage any additional costs associated with the bill. Therefore, this bill will have no expenditure impact for Judicial.

**Commission on Indigent Defense.** CID establishes and monitors programs and services for legal representation to indigent defendants charged with criminal offenses in the courts of the state. CID plans to manage any increase in expenditures, if any, within current resources. Therefore, this bill will have no expenditure impact for CID.

**Department of Corrections.** The fiscal impact of this bill is pending, contingent upon a response from the Department of Corrections.

**Commission on Prosecution Coordination.** The fiscal impact of this bill is pending, contingent upon a response from the Commission on Prosecution Coordination.

**State Revenue**

This bill allows the court to order a person who is unfit to stand trial, but likely to become fit in the foreseeable future, to undergo restoration treatment by the Department of Mental Health (DMH) for 180 days and provides procedures when the person who was not committed after judicial admission proceedings was charged with a violent crime. Further, the procedures require a hearing as to whether the person shall be released on bond and requires any terms or conditions included in the person's bond be therapeutic in nature.

DMH indicates this bill may have a revenue impact to other or federal funds. DMH is working to provide additional information relative to this potential impact. Therefore, this impact is pending, contingent on an additional response from DMH.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 44‑23‑430 OF THE 1976 CODE, RELATING TO HEARINGS CONCERNING A PERSON’S FITNESS TO STAND TRIAL, TO EXTEND THE LENGTH OF TIME CERTAIN PERSONS UNFIT TO STAND TRIAL MAY BE HOSPITALIZED FOR RESTORATION TREATMENT TO ONE HUNDRED EIGHTY DAYS, TO ALLOW THE DEPARTMENT OF MENTAL HEALTH TO PROVIDE RESTORATION TREATMENT IN DETENTION CENTERS AND ON AN OUTPATIENT BASIS IN CERTAIN CIRCUMSTANCES, AND FOR OTHER PURPOSES; AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 44‑23‑10 of the 1976 Code is amended by adding an appropriately numbered new item to read:

“( ) ‘Restoration treatment’ means treatment provided to a person who has been determined unfit to stand trial but likely to become fit in the foreseeable future, and that has as part of its goals assisting the person to gain the capacity to understand the proceedings against him and to assist in his own defense.”

SECTION 2. Section 44‑23‑430 of the 1976 Code is amended to read:

“Section 44‑23‑430. (A) Upon receiving the report of the designated examiners, the court shall set a date for and notify the person and his counsel of a hearing on the issue of his fitness to stand trial. If, in the judgment of the designated examiners or the superintendent of the facility if the person has been detained, the person is in need of hospitalization, the court with criminal jurisdiction over the person may authorize his detention in a suitable facility until the hearing. The person shall be entitled to be present at the hearings and to be represented by counsel. If upon completion of the hearing and consideration of the evidence the court finds that:

(1) the person is fit to stand trial, it shall order the criminal proceedings resumed; or

(2) the person is unfit to stand trial for the reasons set forth in Section 44‑23‑410 and is unlikely to become fit to stand trial in the foreseeable future, the solicitor responsible for the criminal prosecution shall initiate judicial admission proceedings pursuant to Sections 44‑17‑510 through 44‑17‑610 or Section 44‑20‑450 within fourteen days, excluding Saturdays, Sundays, and holidays, during which time the court may order the person hospitalized, may order the person to continue in detention if detained, or, if on bond, may permit the person to remain on bond; or

(3) the person is unfit to stand trial but likely to become fit in the foreseeable future, the court shall order him ~~hospitalized~~ to undergo restoration treatment by the department for up to ~~an additional sixty~~ one hundred eighty days from the commencement of restoration treatment. If the person is in detention, then the department has the discretion to provide the restoration treatment in a hospital or detention facility. If the person is on bond, then the department has the discretion to provide the restoration treatment in a hospital or on an outpatient basis. If the person is found to be unfit at the conclusion of the ~~additional~~ period of restoration treatment, then the solicitor responsible for the criminal prosecution shall initiate judicial admission proceedings pursuant to Sections 44‑17‑510 through 44‑17‑610 or Section 44‑20‑450 within fourteen days, excluding Saturdays, Sundays, and holidays~~, during which time the person shall remain hospitalized~~.

(B) Subject to the provisions of Section 44‑23‑460, persons against whom criminal charges are pending and who are hospitalized in accordance with this article shall have all the rights and privileges of other involuntarily hospitalized persons.

(C) Persons against whom criminal charges are pending but who are not involuntarily committed following judicial admission proceedings shall be released unless charged with a violent crime. If a pending charge is a violent crime, then a hearing must be held by the court in which the charges are pending prior to release on the issue of whether the person shall be released on bond, with terms and conditions appropriate for the safety of the community and the well‑being of the person. Any terms or conditions included in the person’s bond must be therapeutic in nature. Therapeutic terms and conditions may include, but shall not be limited to, a requirement that the person cooperate in any treatment indicated for his psychiatric or intellectual impairments, including keeping scheduled appointments, taking all prescribed medications, and abstaining from alcohol or illegal drug use, and a requirement that the person comply with random or scheduled drug screenings to ensure sobriety and medication compliance. For the purposes of this subsection, ‘violent crime’ means any offense included in Section 16‑1‑60.”

SECTION 3. This act takes effect upon approval by the Governor.

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