

ADDENDUM

Two bills passed this legislative session with provisions which will affect DMH operations. Each had multiple sections addressing different issues. One was the bill proposed by the “Partners-in-Crisis,” a coalition consisting of representatives of law enforcement, hospitals, Probate Judges, and mental health advocates. The second is known as “Mary Lynn’s Law,” and its genesis was the murder of a Charleston school teacher by a criminal defendant following his diversion from jail to the Charleston Mental Health Court.

H 3412 “Partners-in-Crisis” legislation;
These changes went in to effect **June 1, 2005**

Section 1, Amendment to §44-17-410

The amendment now permits supplemental Designated Examination reports. Previously, once designated examiners report to the Probate Court that an emergently admitted person is “Mentally Ill,” the person must be kept in hospital until the commitment hearing, even if, prior to the hearing, the person improves to the point of being able to be safely discharged. With this procedural change, a mechanism now exists to permit a supplemental Designated Examiner report to be filed with the Probate Court up to 48 hours prior to the commitment hearing, likely resulting in the discharge of such persons prior to the hearing, benefiting the person and freeing up limited and expensive acute care bed space.

Section 2, Amendment to §44-17-430

The amendment provides that detention orders expire 72 hours after being issued (if the person has not been apprehended by law enforcement.) Detention orders are orders issued by a Probate Courts directing law enforcement to take a person into custody for a mental health evaluation. Previously there was no time limit on such orders.

Section 3, Creation of new §44-13-05

A new law which authorizes any law enforcement officer who observes a person exhibiting behaviors consistent with a behavioral health emergency—either by virtue of mental illness or chemical dependency--to take a person into protective custody for purposes of a mental health evaluation, as long as the person has not also apparently committed a criminal offense that involves a victim or that carries a penalty of greater than one year imprisonment. The section only authorizes law enforcement to transport the person to a mental health center or to a “crisis stabilization program, if available in their jurisdiction.” For purposes of this law, a crisis stabilization program is defined as “a community-based psychiatric program providing short-term, intensive, mental health treatment in a nonhospital setting for persons who are experiencing a psychiatric crisis and who are either unable to safely function in their daily lives or are a potential threat to themselves or the community, with treatment available twenty-four hours a day, seven days a week.”

Upon arrival at the mental health center or crisis stabilization program, the law enforcement officer who took the person into protective custody shall complete the written affidavit—Part I—of the Application for Emergency Admission provided for under §44-17-410(1).

The new section includes a civil immunity provision which includes more than just the law enforcement officer(s) taking the person into protective custody::

(E) Except when a person is injured as a result of intentional injury, gross negligence, or a wanton disregard for their personal safety, a law enforcement officer, **examining physician, or staff person of a mental health center or a designated facility** who acts in accordance with this section is immune from civil liability. (Emphasis added.)

Note that a hospital emergency department is not a location to which a law enforcement officer could take a person in protective custody for examination under this law.

Section 4, Amendment to §44-17-580

The new amendment now expressly authorizes a Probate Court which issues a civil commitment order for inpatient treatment to include an order for out-patient treatment following the person's discharge from inpatient treatment. Many Probate Judges have already been ordering out-patient treatment following an inpatient civil commitment, but the amendment clarifies this issue.

Section 5, Amendment to §44-24-150

The new amendment changes the current statute to provide that Family Court ordered psychiatric evaluations are to be done by the community mental health centers. The previous language permitted Family Courts to order inpatient evaluations. Only when a Center reports that the child requires an inpatient evaluation may the family court commit the child to a hospital designated by DMH. This change is expected to reduce the number of children and adolescents hospitalized at William S. Hall Institute for evaluation.

Section 6, Amendment to §44-52-50

Like the similar amendment to §44-17-430 (Section 2, above) this amendment changes a provision in the chemical dependency commitment law to provide that detention orders issued by Probate Courts directing law enforcement to take a person into custody for an emergency admission chemical dependency examination expire after 72 hours if the person is not apprehended within that time.

H 3543 (“Mary Lynn’s Law”);

These changes will become effective **January 1, 2006**

A. Provisions related to Community Mental Health Center evaluations of persons charged or convicted of “Stalking” or “Harassment.”

1. **Amendment to §16-3-1840**

The current statute gives a magistrate's court the authority to order a mental health evaluation "performed by the local mental health department." The current statute is silent as to the purpose of this evaluation, but the amendment expressly states that the evaluation is to determine if "the person needs mental health treatment or counseling." The amendment also requires that the evaluation be scheduled within 10 days of the order. The amendment also now authorizes municipal court judges (usually city court judges), as well as magistrates to order such evaluations.

Section [16-3-1840](#). Prior to setting bail, a magistrate or a municipal judge may order a defendant charged with harassment in the first or second degree or stalking pursuant to this article to undergo a mental health evaluation performed by the local mental health department. The purpose of this evaluation is to determine if the defendant needs mental health treatment or counseling as a condition of bond. The evaluation must be scheduled within ten days of the order's issuance. Once the evaluation is completed, the examiner must, within forty-eight hours, issue a report to the local solicitor's office, summary court judge, or other law enforcement agency. Upon receipt of the report, the solicitor, summary court judge, or other law enforcement agency must arrange for a bond hearing before a circuit court judge or summary court judge.

2. **Amendment to §16-3-1740**

The existing statute already gives a sentencing court the authority to order a mental health evaluation of the defendant to determine if the defendant is in need of "mental health treatment or counseling," and if the court subsequently concludes that the defendant does need such care, to order him to obtain treatment. The amendment specifies that the evaluation not take place until the mental health center is in possession of all documentation related to the defendant's current and past criminal charges:

Section [16-3-1740](#). (A) Before sentencing a person convicted of stalking or harassment in the first or second degree, the court may require the person to undergo a mental health evaluation. If the court determines from the results of the evaluation that the person needs mental health treatment or counseling, the court shall require him to undergo mental health treatment or counseling by a court-approved mental health professional, mental health facility, or facility operated by the State Department of Mental Health as a part of his sentence.

(B) When the court orders a mental health evaluation, the evaluation may not take place until the facility conducting the evaluation has received all of the documentation including, but not limited to, warrants, incident reports, and NCIC reports associated with the charges.

(C) If the evaluation results in the unsupervised release of the person, the victim must be notified prior to the person's release. All reasonable efforts must be made to notify the victim personally to assure the notice is received.

B. Provisions related to DMH participating in victim notification activities.

Amendment to §16-3-1525(C)

The existing law has been amended so, for the first time, provide that the arresting law enforcement agency or detention facility is authorized and required to convey information about how to contact a defendant's victim(s) [for those victims that have opted to exercise their right to be notified] when a defendant leaves the physical custody of the arresting law enforcement agency/detention facility and is placed in the physical custody of a mental health facility. **Note** that such victim contact information is confidential, including from the defendant/patient and staff other than those potentially involved in a subsequent victim notification, and victim information will likely require special handling.

Section [16-3-1525](#)(C) of the 1976 Code is amended to read:

(C) A law enforcement agency, upon effecting the arrest or detention of a person accused of committing an offense involving one or more victims, must provide to the jail, prison, or detention or holding facility, including a mental health facility, having physical custody of the defendant, the name, mailing address, and telephone number of each victim. If the person is transferred to another facility, this information immediately must be transmitted to the receiving facility. The names, addresses, and telephone numbers of victims and witnesses contained in the files of a jail, prison, or detention or holding facility, including a mental health facility, are confidential and must not be disclosed directly or indirectly, except as necessary to provide notification.

Amendment to §16-3-1525

With the addition of new paragraph (M), DMH inpatient facilities, principally WSHPI forensic services, will, to a limited extent, become involved in the process of victim notifications.

Section [16-3-1525](#) of the 1976 Code is amended by adding:

(L) A diversion program, except a diversion program administered by the South Carolina Prosecution Coordination Commission or by a circuit solicitor, reasonably must attempt to notify the victim of a crime prior to

the defendant's release from the program unless the defendant is released to a law enforcement agency.

(M) In every case when there is a court-ordered or mandatory mental evaluation, which takes place in an inpatient facility, the organization or facility responsible for the evaluation reasonably must attempt to notify the victim of the crime prior to the defendant's release from the facility unless the defendant is released to a law enforcement agency.

(N) Notification of a victim pursuant to the provisions of this section may not be only by electronic or other automated communication or recording. However, after three unsuccessful attempts to reach the victim by electronic or other automated communication or recording pursuant to the provisions of this section, the appropriate agency or diversion program shall attempt to make personal contact with the victim.

C. **Mental Health Courts Task Force**

“Mary Lynn’s Law” also contains a provision establishing a Task Force to study Mental Health Courts and make recommendations to the General Assembly. DMH must appoint two (2) of the thirteen (13) members of the Task Force:

A task force is created to examine and design statewide standards for the operation of mental health courts in the State. The study committee shall consist of thirteen voting members as follows:

- (1) one member appointed by the director of the State Office of Victim Assistance;
- (2) one member of the House of Representatives appointed by the Speaker of the House;
- (3) one member of the Senate appointed by the President of the Senate;
- (4) one retired circuit court judge appointed by the Chief Justice of the Supreme Court;
- (5) one circuit solicitor appointed by the Prosecution Coordination Commission;
- (6) two members appointed by the director of the Department of Mental Health, both of whom must be mental health professionals;**
- (7) one member of an operating mental health court appointed by the Richland County Probate Judge;

- (8) one member appointed by the director of the Department of Probation, Parole and Pardon Services;
- (9) one member appointed by the director of the Department of Corrections;
- (10) one probate judge appointed by the South Carolina Probate Judges Association;
- (11) one magistrate appointed by the South Carolina Summary Court Judges Association; and
- (12) one member appointed by the South Carolina Public Defender Association.

The members of the study committee shall elect a chairman and shall meet at times and places as the chairman determines to be necessary. The committee must be staffed by personnel assigned by the Chairman of the Senate Judiciary Committee and the Chairman of the House Judiciary Committee. The study committee on mental health courts shall report its findings to the General Assembly no later than the first day of the 2006 legislative session at which time the study committee is terminated.