



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 1, 2024

The Honorable Jacqueline Mask, Senior Chancellor
The Honorable Stephen T. Bailey, Chancellor
The Honorable Michael Malski, Chancellor
The Honorable Bradley D. Tennison, Chancellor
First Chancery Court District
Post Office Box 7395
Tupelo, Mississippi 38802

Re: Jurisdiction Over Civil Commitment Proceedings

Dear Chancellors:

The Office of the Attorney General has received your request for an official opinion.

Background

A recent statutory amendment to Mississippi Code Annotated Section 41-21-63 has raised questions regarding jurisdiction over civil commitment proceedings when the respondent has been charged with a felony crime.

Questions Presented

1. When is jurisdiction over civil commitment proceedings vested in the circuit court, as opposed to the chancery court, pursuant to Section 41-21-63?
2. What is the definition of “unresolved felony charges” for purposes of interpretation of Section 41-21-63? Would an “unresolved felony charge” encompass an arrest for a felony charge that has yet to be indicted? Would it encompass a felony for which an individual is on probation or parole, but who has not yet been discharged? Would it encompass a person entering a plea under Section 99-15-26?

Brief Response

1. Jurisdiction over civil commitment proceedings for respondents *with* unresolved felony charges is vested in the circuit court and remains with the circuit court even when the court enters an order of incompetency to stand trial. Jurisdiction over civil commitment

proceedings for persons *without* unresolved felony charges shall be vested in and remain with the chancery court.

2. For the purposes of the interpretation of Section 41-21-63(2)(b), “unresolved felony charges” means a felony criminal indictment that has not yet been resolved.

Applicable Law and Discussion

Section 41-21-63(2) in its current form provides as follows:

(a) The chancery court, or the chancellor in vacation, shall have jurisdiction under Sections 41-21-61 through 41-21-107 *except* over persons with unresolved felony charges *unless* paragraph (b) of this subsection applies.

(b) If a circuit court with jurisdiction over unresolved felony charges enters an order concluding that a person is incompetent to stand trial and is not restorable to competency in the foreseeable future, *the circuit court shall retain jurisdiction and shall proceed with civil commitment procedures* in the same manner as described in Sections 41-21-61 through 41-21-107. The order of the circuit court finding that the person is incompetent to stand trial and is not restorable to competency in the foreseeable future shall be in lieu of the affidavit for commitment provided for in Section 41-21-65. Additionally, if the finding of the circuit court is based on the report and/or testimony of a physician or psychologist that has examined the person, the provisions of Section 41-21-67 for psychiatric examinations shall not apply.

(emphasis added). As you note in your request, this statute was recently amended by House Bill No. 1088 in the 2024 Legislative Session. Previously, if the circuit court entered an order concluding that a respondent with unresolved felony charges was mentally incompetent to stand trial for those charges, the matter would be referred to the chancery court for commitment proceedings. After the amendment, the circuit court now retains jurisdiction over the subsequent commitment proceedings for all respondents with unresolved felony charges.

While subsection (b) was amended by H.B. 1088, it appears that the second excepting clause at the end of subsection (a) was inadvertently left in place. The excepting clause “unless paragraph (b) of this subsection applies” has been rendered meaningless because as the statute has been amended, there is no possible situation in which paragraph (b) could apply.

In similar circumstances, our office has previously opined that “it is a well settled rule of statutory construction that the legislature will not be presumed to enact conflicting provisions,” and “the true meaning of a statute will be enforced even to the extent of correcting language used.” MS AG Op., *Burnham* at *1 (Mar. 7, 1994) (internal citations omitted).

Further, “it is a maxim of construction of legislative enactments that they shall be so interpreted as to bring them into conformity with the manifest purpose and reasons which lie at their foundations.” *Millwood v. State*, So. 2d 582, 583 (Miss. 1941).

Based on the legislative history, the “manifest purpose and reason” for the amendment to Section 41-21-63 appears to be to empower the circuit courts to move forward with civil commitment proceedings for respondents with unresolved felony charges even after an order of incompetency is entered. The intention seems to have been to close a procedural gap, not create a new one.¹

Thus, Section 41-21-63 must be read to the following effect: the circuit courts shall have exclusive jurisdiction over civil commitment proceedings for respondents *with* unresolved felony charges, while the chancery courts shall retain jurisdiction over civil commitment proceedings for all respondents *without* unresolved felony charges.

In response to your second question, the term “unresolved felony charge” is not defined in Section 41-21-63. “Felony,” however, is defined in another statute and means “any violation of law punished with death or confinement in the penitentiary.” Miss. Code Ann. § 1-3-11. “Charges” is not defined in statute, but it is a technical term within criminal practice in Mississippi. As such, it should be construed “...according to its technical meaning.” Miss. Code § 1-3-65; *Watson v. Oppenheim*, 301 So. 3d 37, 41-42 (Miss. 2020). Mississippi Rule of Criminal Procedure 2.1(a) states that “[a]ll criminal proceedings shall be commenced either by charging affidavit, indictment, or bill of information.” The technical meaning of “charges” for the purposes of the interpretation of Mississippi criminal law is indictment or other similar formal charging instrument. However, whether a felony charge is “unresolved” turns on a question of fact and is ultimately a matter for judicial determination.

Further, “legislative intent is the controlling feature of statutory interpretation,” *Chandler v. McKee*, 202 So. 3d 1269, 1271 (Miss. 2016), and “the primary goal in interpreting statutes is ‘to adopt that interpretation [that] will meet the true meaning of the Legislature.’” *Hall v. State*, 241 So. 3d 629, 631 (Miss. 2018) (quoting *Legislature v. Shipman*, 170 So. 3d 1211, 1215 (Miss. 2015)). The legislative history behind the amendment to Section 41-21-63 reveals that the Legislature intended for “charges” to be construed as “indictment.”²

Therefore, for the purposes of the interpretation of Section 41-21-63(2), “unresolved felony charges” means a felony indictment. An “unresolved felony charge” would not encompass an arrest for a felony charge that has yet to be indicted.

Finally, whether an “unresolved felony charge” would encompass an individual who is on probation or parole, but who has not yet been discharged, or whether it would encompass a person entering a plea under Section 99-15-26 are both questions requiring factual determinations and are beyond the scope of our office’s ability to issue an official opinion. Under Section 7-5-25, our

¹ On February 20, 2024, the Honorable Representative Jansen Owen presented House Bill No. 1088 on the floor of the Mississippi House of Representatives. As the bill’s cosponsor, Representative Owen explained the purpose of the bill as follows: “. . . to authorize the circuit court[s] to conduct civil commitment procedures, *similar to the procedures we currently have in chancery court.*” Mississippi House of Representatives Floor Debate Video Livestream, Feb. 20, 2024 (Statement of Rep. Owen) (emphasis added).

² In response to one question regarding indictment, Representative Owen answered as follows: “. . .that’s where we had to draw the line as far as the possible constitutional issue with giving circuit court that jurisdiction. *We set the line at indictment* because we know for sure that circuit court is vested with jurisdiction at that point, so we set it there to avoid any potential constitutional challenges as far as chancery court is concerned.” Mississippi House of Representatives Floor Debate Video Livestream, Feb. 20, 2024 (Statement of Rep. Owen) (emphasis added).

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office may only address prospective questions of state law; we cannot address questions of fact. MS AG Op., *Barton* at *2 n.2 (May 17, 2021).

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Caleb A. Pracht*

Caleb A. Pracht
Special Assistant Attorney General

OFFICIAL OPINION