

House Bill 971

By: Representative Martin of the 47<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 17-7-131 of the Official Code of Georgia Annotated, relating to  
2 proceedings upon a plea of insanity or mental incompetency at the time of a crime, so as to  
3 change certain provisions relating to the court's instructions; to change certain provisions  
4 relating to punishment; to provide for related matters; to repeal conflicting laws; and for  
5 other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Code Section 17-7-131 of the Official Code of Georgia Annotated, relating to proceedings  
9 upon a plea of insanity or mental incompetency at the time of a crime, is amended by striking  
10 subsections (b), (c), and (j) and inserting in lieu thereof the following:

11 "(b)(1) In all cases in which the defense of insanity is interposed, or issues of mental  
12 illness or mental retardation are raised, the jury, or the court if tried by it, shall find  
13 whether the defendant is:

14 (A) Guilty;

15 (B) Not guilty;

16 (C) Not guilty by reason of insanity at the time of the crime;

17 (D) Guilty but mentally ill at the time of the crime, but the finding of guilty but  
18 mentally ill shall be made only in felony cases; or

19 (E) Guilty but mentally retarded, but the finding of mental retardation shall be made  
20 only in felony cases.

21 (2) A plea of guilty but mentally ill at the time of the crime or a plea of guilty but  
22 mentally retarded shall not be accepted until the defendant has undergone examination  
23 by a licensed psychologist or psychiatrist and the court has examined the psychological  
24 or psychiatric reports, held a hearing on the issue of the defendant's mental condition, and  
25 is satisfied that there is a factual basis that the defendant was mentally ill at the time of  
26 the offense or mentally retarded to which the plea is entered.

1 (2.1) A plea of not guilty by reason of insanity at the time of the crime shall not be  
 2 accepted and the defendant adjudicated not guilty by reason of insanity by the court  
 3 without a jury until the defendant has undergone examination by a licensed psychologist  
 4 or psychiatrist and the court has examined the psychological or psychiatric reports, has  
 5 held a hearing on the issue of the defendant's mental condition, and the court is satisfied  
 6 that the defendant was insane at the time of the crime according to the criteria of Code  
 7 Section 16-3-2 or 16-3-3.

8 (3) In all cases in which the defense of insanity is interposed, the trial judge shall charge  
 9 the jury, in addition to other appropriate charges, the following:

10 (A) I charge you that should you find the defendant not guilty by reason of insanity at  
 11 the time of the crime, the defendant will be committed to a state mental health facility  
 12 until such time, if ever, that the court is satisfied that he or she should be released  
 13 pursuant to law.

14 ~~(B) I charge you that should you find the defendant guilty but mentally ill at the time~~  
 15 ~~of the crime, the defendant will be given over to the Department of Corrections or the~~  
 16 ~~Department of Human Resources, as the mental condition of the defendant may~~  
 17 ~~warrant.~~

18 ~~(C) I charge you that should you find the defendant guilty but mentally retarded, the~~  
 19 ~~defendant will be given over to the Department of Corrections or the Department of~~  
 20 ~~Human Resources, as the mental condition of the defendant may warrant.~~

21 (c)(1) In all criminal trials in any of the courts of this state wherein an accused shall  
 22 contend that he or she was insane or otherwise mentally incompetent under the law at the  
 23 time the act or acts charged against him or her were committed, the trial judge shall  
 24 instruct the jury that they may consider, in addition to verdicts of 'guilty' and 'not guilty,'  
 25 the additional verdicts verdict of 'not guilty by reason of insanity at the time of the crime,'  
 26 ~~'guilty but mentally ill at the time of the crime,' and 'guilty but mentally retarded.'~~

27 (2) In all criminal trials where the accused has put his or her mental illness or mental  
 28 retardation into issue, the court may instruct the jury on the additional verdicts of 'guilty  
 29 but mentally ill at the time of the crime,' or 'guilty but mentally retarded,' only with the  
 30 consent of the accused. Otherwise issues of 'guilty but mentally ill at the time of the  
 31 crime' or 'guilty but mentally retarded' are to be resolved at the presentence hearing.

32 ~~(1)(A)~~ The defendant may be found 'not guilty by reason of insanity at the time of the  
 33 crime' if he or she meets the criteria of Code Section 16-3-2 or 16-3-3 at the time of the  
 34 commission of the crime. If the court or jury should make such finding, it shall so  
 35 specify in its verdict.

36 ~~(2)(B)~~ The defendant may be found 'guilty but mentally ill at the time of the crime' if  
 37 the defendant presents some evidence that he or she was mentally ill at the time of the

1 crime and the jury, or court acting as trier of facts, finds that the prosecution has not  
2 proven beyond a reasonable doubt that the defendant is ~~guilty of the crime charged and~~  
3 was not mentally ill at the time of the commission of the crime. If the court or jury  
4 should make such finding, it shall so specify in its verdict.

5 ~~(3)(C)~~ The defendant may be found 'guilty but mentally retarded' if the defendant  
6 produces some evidence that he or she is mentally retarded and the jury, or court acting  
7 as trier of facts, finds that the prosecution has not proven beyond a reasonable doubt  
8 that the defendant is not ~~guilty of the crime charged and~~ is mentally retarded. If the  
9 court or jury should make such finding, it shall so specify in its verdict."

10 "(j) In the trial of any case in which the death penalty is sought ~~which commences on or~~  
11 ~~after July 1, 1988~~, should the judge find in accepting a plea of guilty but mentally ill or  
12 mentally retarded or the jury or court find ~~in its verdict~~ that the defendant is guilty of the  
13 crime charged but mentally ill or mentally retarded, the death penalty shall not be imposed  
14 ~~and the court shall sentence the defendant to imprisonment for life."~~

## 15 SECTION 2.

16 All laws and parts of laws in conflict with this Act are repealed.