

Senate Bill 398

By: Senator Harp of the 29th

**AS PASSED**

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 revise procedures related to  
4 psychiatric evaluations of defendants; to provide for a timeframe for forwarding the  
5 examination report to the Department of Corrections; to provide for related matters; to repeal  
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

12 "(b)(1) In all cases in which the defense of insanity is interposed, the jury, or the court  
13 if tried by it, shall find 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~~ placed in the custody of the  
 16 Department of Corrections ~~or the Department of Human Resources, as the mental~~  
 17 ~~condition of the defendant may warrant~~ which will have responsibility for the  
 18 evaluation and treatment of the mental health needs of the defendant, which may  
 19 include, at the discretion of the Department of Corrections, referral for temporary  
 20 hospitalization at a facility operated by the Department of Human Resources.

21 (C) I charge you that should you find the defendant guilty but mentally retarded, the  
 22 defendant will be ~~given over to~~ placed in the custody of the Department of Corrections,  
 23 which will have responsibility for the evaluation and treatment of the mental health  
 24 needs of the defendant, which may include, at the discretion of the Department of  
 25 Corrections, referral for temporary hospitalization at a facility operated by the  
 26 Department of Human Resources ~~or the Department of Human Resources, as the mental~~  
 27 ~~condition of the defendant may warrant."~~

28 "(g)(1) Whenever a defendant is found guilty but mentally ill at the time of a felony or  
 29 guilty but mentally retarded, or enters a plea to that effect that is accepted by the court,  
 30 the court shall sentence him or her in the same manner as a defendant found guilty of the  
 31 offense, except as otherwise provided in subsection (j) of this Code section. ~~A defendant~~  
 32 ~~who is found guilty but mentally ill at the time of the felony or guilty but mentally~~  
 33 ~~retarded shall be evaluated by a psychiatrist or a licensed psychologist from the~~  
 34 ~~Department of Human Resources after sentencing and prior to transfer to a Department~~  
 35 ~~of Corrections facility. The Board of Human Resources shall develop appropriate rules~~  
 36 ~~and regulations for the implementation of such procedures.~~

