

Senate Bill 190

By: Senators Harp of the 29th, Meyer von Bremen of the 12th, Moody of the 56th, Goggans of the 7th, Thomas of the 54th and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Part 2 of Article 6 of Chapter 7 of Title 17 of the Official Code of Georgia  
2 Annotated, relating to issues of insanity and mental incompetency in pretrial proceedings,  
3 so as to provide for definitions; to provide that the committing court may have discretion to  
4 allow evaluation in the community for certain defendants; to provide that the committing  
5 court can order an evaluation of the defendant; to provide for the committing court to  
6 conduct a civil commitment hearing on the defendant; to provide for related matters; to  
7 repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

10 Part 2 of Article 6 of Chapter 7 of Title 17 of the Official Code of Georgia Annotated,  
11 relating to issues of insanity and mental incompetency in pretrial proceedings, is amended  
12 by revising Code Section 17-7-130, relating to proceedings upon a plea of mental  
13 incompetency to stand trial, as follows:

14 "17-7-130.

15 (a) As used in this Code section, the term:

16 (1) 'Committing court' means the court which has jurisdiction over the criminal charges  
17 against the defendant.

18 (2) 'Inpatient' shall have the same meaning as in paragraph (9.1) of Code Section 37-3-1.

19 (3) 'Nonviolent felony offense' means any felony other than:

20 (A)(i) Murder;

21 (ii) Rape;

22 (iii) Aggravated sodomy;

23 (iv) Armed robbery;

24 (v) Aggravated assault;

25 (vi) Hijacking of a motor vehicle or an aircraft;

26 (vii) Aggravated battery;

1 (viii) Aggravated sexual battery;

2 (ix) Aggravated child molestation; or

3 (x) Aggravated stalking; and

4 (B) Those felony offenses deemed by the committing court to involve an allegation of  
 5 actual or potential physical harm to another person.

6 (4) 'Outpatient' shall have the same meaning as in paragraph (12.1) of Code Section  
 7 37-3-1.

8 (5) 'Violent felony' means

9 (A)(i) Murder;

10 (ii) Rape;

11 (iii) Aggravated sodomy;

12 (iv) Armed robbery;

13 (v) Aggravated assault;

14 (vi) Hijacking of a motor vehicle or an aircraft;

15 (vii) Aggravated battery;

16 (viii) Aggravated sexual battery;

17 (ix) Aggravated child molestation; or

18 (x) Aggravated stalking; and

19 (B) Those felony offenses deemed by the committing court to involve an allegation of  
 20 actual or potential physical harm to another person.

21 (a)(b) Whenever a plea is filed that a defendant in a criminal case is mentally incompetent  
 22 to stand trial, it shall be the duty of the court to cause the issue of the defendant's mental  
 23 competency to stand trial to be tried first by a special jury. If the special jury finds the  
 24 defendant mentally incompetent to stand trial, the court shall retain jurisdiction over the  
 25 defendant but shall transfer the defendant to the Department of Human Resources;  
 26 provided, however, that if the defendant is charged with a misdemeanor offense or a  
 27 nonviolent felony offense, the court may, in its discretion, retain jurisdiction over the  
 28 defendant, but require or allow evaluation to be done on an outpatient basis by the  
 29 Department of Human Resources. If the court allows outpatient evaluation and the  
 30 defendant is in custody the court shall release the defendant on a recognizance bond.

31 (b)(c) Within 90 days after the Department of Human Resources has received actual  
 32 custody of a person or, in the case of an outpatient, a court order requiring evaluation of  
 33 a defendant pursuant to subsection (a) (b) of this Code section, the person shall be  
 34 evaluated and a diagnosis made as to whether the person is presently mentally incompetent  
 35 to stand trial and, if so, whether there is a substantial probability that the person will attain  
 36 mental competency to stand trial in the foreseeable future. If the person is found to be  
 37 mentally competent to stand trial, the department shall immediately report that finding and

1 the reasons therefor to the committing court; and the person shall be returned to the court  
2 as provided for in subsection ~~(e)~~(f) of this Code section.

3 ~~(e)~~(d) If the person is found to be mentally incompetent to stand trial by the Department  
4 of Human Resources and there is not a substantial probability that the person will attain  
5 competency in the foreseeable future, the department shall return the physical custody of  
6 the person to the court and shall report to the committing court that finding, and the reasons  
7 therefor, and its opinion as to whether the defendant currently meets criteria for  
8 commitment as an inpatient or as an outpatient pursuant to Chapters 3 or 4 of Title 37 to  
9 the committing court. If the person meets the criteria for civil commitment, he shall  
10 thereupon be civilly committed to a state institution pursuant to Chapter 3 or 4 of Title 37,  
11 whichever is applicable. If the person does not meet the criteria for civil commitment or  
12 if the person after having been committed becomes mentally competent to stand trial, the  
13 committing court shall be notified and the person shall be returned to the court as provided  
14 for in subsection (e) of this Code section. The committing court shall retain custody of the  
15 person and may order an independent evaluation of the person by a court appointed  
16 licensed clinical psychologist or psychiatrist, who shall report to the court in writing as to  
17 the current mental and emotional condition of the defendant. Based on consideration of  
18 all evidence and all reports, the committing court may:

19 (1) Allow the dismissal of the criminal charges and refer the case to the probate court for  
20 commitment proceedings pursuant to Chapter 3 or 4 of Title 37, if appropriate; or

21 (2) Retain jurisdiction of the person and conduct a hearing at which it shall hear evidence  
22 and consider all psychiatric and psychological reports submitted to the court and  
23 determine whether the state has proved by clear and convincing evidence that the person  
24 meets the criteria for involuntary civil commitment as an inpatient or as an outpatient  
25 pursuant to Chapter 3 or 4 of Title 37, whichever is applicable. The burden of proof in  
26 such hearings shall be upon the state.

27 (A) If the person does not meet the criteria for inpatient or outpatient civil  
28 commitment, the person shall be released subject to provisions of bond and other  
29 conditions set by the committing court.

30 (B) If the person is found to meet the criteria for involuntary civil commitment as an  
31 inpatient or outpatient, the judge may issue an order committing the person for a period  
32 not to exceed one year.

33 (i) If the person so committed is charged with a misdemeanor offense, the  
34 committing court may civilly commit the person. If, following the commitment  
35 period, the person continues to meet commitment criteria as an inpatient or an  
36 outpatient, the committing court shall dismiss the charges and transfer jurisdiction of  
37 the case to the probate court for further proceedings pursuant to Title 37.

1 (ii)(I) A person who is so committed and is charged with a violent felony may only  
 2 be released from that inpatient or outpatient commitment by order of the committing  
 3 court in accordance with the procedures specified in paragraphs (1) through (3) of  
 4 subsection (f) of Code Section 17-7-131 except that the burden of proof in such  
 5 release hearing shall be on the state and if the committed person cannot afford a  
 6 physician or licensed clinical psychologist of the person's choice, the person may  
 7 petition the court and the court may order such cost to be paid by the county.

8 (II) The Department of Human Resources shall report annually to the committing  
 9 court on whether the civilly committed person continues to meet criteria for  
 10 involuntary commitment as an inpatient or an outpatient pursuant to Chapter 3 or  
 11 4 of Title 37. The committing court shall review the case and enter an appropriate  
 12 order, either to renew the inpatient or outpatient civil commitment, to change the  
 13 commitment from inpatient to outpatient, or to dismiss the charges and transfer  
 14 jurisdiction of the case to the probate court for further proceedings pursuant to Title  
 15 37, if appropriate.

16 ~~(d)~~(e) If the person is found to be mentally incompetent to stand trial but there is a  
 17 substantial probability that the person will attain competency in the foreseeable future, by  
 18 the end of the 90 day period, or at any prior time, the department shall report that finding  
 19 and the reasons therefor to the committing court ~~and shall retain custody over the person~~  
 20 ~~for the purpose of continued treatment for an additional period not to exceed nine months.~~  
 21 If the defendant is charged with a misdemeanor offense or a nonviolent felony offense, the  
 22 court may, in its discretion, retain jurisdiction over the defendant, but require or allow  
 23 continued treatment to be done on an outpatient basis by the Department of Human  
 24 Resources. The department shall monitor the person's outpatient treatment for an  
 25 additional period not to exceed nine months. If the defendant is charged with a violent  
 26 felony the department shall retain the individual for the purpose of continued treatment for  
 27 an additional period not to exceed nine months. If, by the end of the nine-month period or  
 28 at any prior time if the person's condition warrants, the person is still found not to be  
 29 competent to stand trial, irrespective of the probability of recovery in the foreseeable  
 30 future, the department shall report that finding and the reasons therefor to the committing  
 31 court. The committing court shall then follow the procedures in subsection (d) of this Code  
 32 section for further commitment or release. ~~If the person meets the criteria for civil~~  
 33 ~~commitment, he shall thereupon be civilly committed to a state institution pursuant to~~  
 34 ~~Chapter 3 or 4 of Title 37, whichever is applicable. If the person does not meet the criteria~~  
 35 ~~for civil commitment or if the person after having been committed becomes mentally~~  
 36 ~~competent to stand trial, the committing court shall be notified and the person shall be~~  
 37 ~~returned to the court as provided for in subsection (e) of this Code section.~~

1 (e)(f)(1) A person who is an inpatient and is found by the Department of Human  
2 Resources to be mentally competent to stand trial shall be discharged into the custody of  
3 a law enforcement officer of the jurisdiction of the court which committed the person to  
4 the department unless the court has dismissed the charges which led to the commitment,  
5 in which case the person shall be discharged. If the person found to be mentally  
6 incompetent to stand trial is at any time found by the Department of Human Resources  
7 to be mentally competent to stand trial, the committing court shall be notified. In the  
8 event a law enforcement officer does not appear and take custody of the person within  
9 20 days after notice to the appropriate law enforcement official in the jurisdiction of the  
10 committing court, the presiding judge of the committing court, and the prosecuting  
11 attorney for the court, the department shall itself return the person to one of the  
12 committing court's detention facilities; and the cost of returning the person shall be paid  
13 by the county in which the committing court is located. All notifications shall be sent by  
14 certified mail or statutory overnight delivery, return receipt requested. With the  
15 concurrence of the appropriate court and upon the recommendation of the department's  
16 attending physician, any person discharged as competent to stand trial may be held by the  
17 department instead of at the court's detention facilities whenever, in the attending  
18 physician's opinion, such detention in the court's facilities would be detrimental to the  
19 well-being of the person so committed. Such alternative detention shall continue only  
20 until the date of the person's trial.

21 ~~(2) The physical custody of a person who is found by the Department of Human~~  
22 ~~Resources to be mentally incompetent to stand trial and for whom there is no substantial~~  
23 ~~probability that he or she will attain competency in the foreseeable future shall be~~  
24 ~~returned to the committing court. The committing court shall retain custody of the person~~  
25 ~~and may order an independent evaluation of the person by a court appointed licensed~~  
26 ~~clinical psychologist or psychiatrist who shall report to the court in writing as to the~~  
27 ~~current mental and emotional condition of the person. Then the court shall conduct a~~  
28 ~~hearing at which the court shall hear evidence and consider all psychiatric and~~  
29 ~~psychological reports submitted to the court and determine whether the state has proved~~  
30 ~~by clear and convincing evidence that the person meets the criteria for involuntary civil~~  
31 ~~commitment pursuant to Chapter 3 or Chapter 4 of Title 37, whichever is applicable. If~~  
32 ~~the person is found to meet the criteria for involuntary civil commitment, the judge may~~  
33 ~~issue an order committing the person to a state institution. If the person does not meet~~  
34 ~~the criteria for involuntary civil commitment, the person shall be released subject to~~  
35 ~~provisions of bond and other conditions set by the committing court. A person committed~~  
36 ~~under the provisions of this paragraph may only be discharged from that commitment by~~  
37 ~~order of the committing court in accordance with the procedures specified in paragraphs~~

1 ~~(1) through (3) of subsection (f) of Code Section 17-7-131 except that the burden of proof~~  
 2 ~~in such release hearing shall be on the state and if the committed person cannot afford a~~  
 3 ~~physician or licensed clinical psychologist of the person's choice, the person may petition~~  
 4 ~~the court and the court may order such cost be paid by the county. This paragraph applies~~  
 5 ~~to those persons:~~

6 ~~(A) Accused of committing the following crimes:~~

7 ~~(i) Murder;~~

8 ~~(ii) Rape;~~

9 ~~(iii) Aggravated sodomy;~~

10 ~~(iv) Armed robbery;~~

11 ~~(v) Aggravated assault;~~

12 ~~(vi) Hijacking of a motor vehicle or an aircraft;~~

13 ~~(vii) Aggravated battery;~~

14 ~~(viii) Aggravated sexual battery;~~

15 ~~(ix) Aggravated child molestation; or~~

16 ~~(x) Aggravated stalking;~~

17 ~~(B) Who are an obvious threat to society as determined by the Department of Human~~  
 18 ~~Resources or the assigned judge; or~~

19 ~~(C) Who have been convicted of or committed for three or more felonies. A person~~  
 20 ~~who is an outpatient and is found by the Department of Human Resources to be~~  
 21 ~~mentally competent to stand trial may remain in the community under conditions of~~  
 22 ~~bond or other conditions ordered by the committing court, if any, until the date of the~~  
 23 ~~person's trial.~~

24 ~~(f)~~(g) Any person found by the Department of Human Resources to be mentally competent  
 25 to stand trial returned to the court as provided in subsection ~~(e)~~(f) of this Code section shall  
 26 again be entitled to file a special plea as provided for in this Code section.

27 ~~(g)~~(h) If a person is found to be mentally incompetent to stand trial, whether or not  
 28 committed ~~to a state institution under~~ pursuant to this Code section, the state may file at  
 29 any time a motion for rehearing on the issue of the person's mental competency. The court  
 30 shall grant said motion upon a showing by the state that there are reasonable grounds to  
 31 believe that the person's mental condition has changed. If this motion is granted, the case  
 32 shall proceed as provided in subsection ~~(a)~~(b) of this Code section."

## 33 SECTION 2.

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