

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

AS PASSED

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 **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 offense' means any offense 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;

4 (xi) Arson in the first degree and in the second degree;

5 (xii) Stalking;

6 (xiii) Fleeing and attempting to elude a police officer;

7 (xiv) Any sexual offense against a minor; or

8 (xv) Any offense which involves the use of a deadly weapon or destructive device;

9 and

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

12 (4) 'Outpatient' shall have the same meaning as in paragraph (12.1) of Code Section
 13 37-3-1, provided that the court determines that the defendant meets the criteria for release
 14 on bail or other pre-trial release pursuant to Code Section 17-6-1.

15 ~~(a)~~(b) Whenever a plea is filed that a defendant in a criminal case is mentally incompetent
 16 to stand trial, it shall be the duty of the court to cause the issue of the defendant's mental
 17 competency to stand trial to be tried first by a special jury. If the special jury finds the
 18 defendant mentally incompetent to stand trial, the court shall retain jurisdiction over the
 19 defendant but shall transfer the defendant to the Department of Human Resources;
 20 provided, however, that if the defendant is charged with a misdemeanor offense other than
 21 as included in subparagraph (A) of paragraph (3) of subsection (a) of this Code section or
 22 a nonviolent offense, the court may, in its discretion, retain jurisdiction over the defendant,
 23 and may allow evaluation to be done on an outpatient basis by the Department of Human
 24 Resources. If the court allows outpatient evaluation and the defendant is in custody, the
 25 court may release the defendant in accordance with the provisions of Code Section 17-6-1,
 26 et.seq.

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

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

23 (1) Refer the case to the probate court for commitment proceedings pursuant to Chapter
 24 3 or 4 of Title 37, if appropriate and if the charges are dismissed for any reason; or

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

31 (A) If the defendant does not meet the criteria for inpatient or outpatient civil
 32 commitment, the defendant shall be released in accordance with the provisions of Code
 33 Section 17-6-1 et. seq.

34 (B) If the defendant is found to meet the criteria for involuntary civil commitment as
 35 an inpatient or outpatient, the judge may issue an order committing the defendant.

36 (i) If the defendant so committed is charged with a misdemeanor offense, the
 37 committing court may civilly commit the defendant for a period not to exceed one

1 year. Following the commitment period, the charges against the defendant shall be
 2 dismissed by operation of law.

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

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

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

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

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

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

1 provisions of bond and other conditions set by the committing court. A person committed
 2 under the provisions of this paragraph may only be discharged from that commitment by
 3 order of the committing court in accordance with the procedures specified in paragraphs
 4 (1) through (3) of subsection (f) of Code Section 17-7-131 except that the burden of proof
 5 in such 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 petition
 7 the court and the court may order such cost be paid by the county. This paragraph applies
 8 to those persons:

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

10 (i) ~~Murder;~~

11 (ii) ~~Rape;~~

12 (iii) ~~Aggravated sodomy;~~

13 (iv) ~~Armed robbery;~~

14 (v) ~~Aggravated assault;~~

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

16 (vii) ~~Aggravated battery;~~

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

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

19 (x) ~~Aggravated stalking;~~

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

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

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

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

- 1 **SECTION 2.**
- 2 All laws and parts of laws in conflict with this Act are repealed.