

COMMITTEE OF CONFERENCE SUBSTITUTE TO SB 244

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 37 and various other titles of the Official Code of Georgia Annotated,
2 relating to mental health and other matters, so as to revise certain provisions relating to the
3 Department of Behavioral Health and Developmental Disabilities and mental incompetency;
4 to provide for service of notice against the department; to delete an obsolete provision
5 relating to the arrest of persons with contagious diseases; to revise certain provisions relating
6 to conviction data for employment purposes; to delete a Code section relating to hearing
7 rights for revoked or suspended licenses, permits, or certificates; to correct a cross-reference
8 relating to a mental health law; to provide for additional members of the Behavioral Health
9 Coordinating Council; to revise a provision relating to the duties and functions of regional
10 planning boards; to provide for continuances in court for board members attending meetings;
11 to revise provisions relating to disposition of a deprived child; to provide conditions for the
12 placement of a child following a termination order; to revise and add definitions relating to
13 proceedings upon plea of mental incompetency to stand trial; to provide for certain children
14 found incompetent to stand trial; to provide that certain training relating to child abuse is
15 conducted by the Office of the Child Advocate for the Protection of Children; to provide for
16 educational services for children in the physical custody of the department; to provide for
17 input by the department in pilot projects to address at-risk students; to provide for medical
18 scholarships for applicants practicing in hospitals or facilities operated by or under the
19 jurisdiction of the department; to provide that mental health records may be maintained in
20 electronic format; to provide for liability coverage for nonprofit agencies and their employees
21 who have contracted with the department; to provide that the commissioner of behavioral
22 health and developmental disabilities is a member of the Purchasing Advisory Council; to
23 provide that the commissioner of behavioral health and developmental disabilities is a
24 member of the State Use Council; to provide that there shall be a privilege to refuse to
25 disclose certain information related to certain research conducted by the department; to
26 amend an Act approved May 6, 2008 (Ga. L. 2008, p. 133), relating to the office of disability
27 services ombudsman; to provide for related matters; to repeal conflicting laws; and for other
28 purposes.

29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

30 **SECTION 1.**

31 Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended by
32 adding a new Code section to Chapter 1, relating to general provisions, to read as follows:

33 "37-1-6.

34 When any action is brought against the department, the board, the commissioner, or any
35 employee or agent thereof or when any action is brought in which the department could be
36 held responsible for damages awarded in such action, it shall be the duty of the plaintiff to
37 provide for service of notice of the pendency of such action by providing for service of a
38 second original process, issued from the court in which the action is filed, upon the
39 commissioner personally or upon a person designated by the commissioner in writing to
40 serve as agent for the acceptance of such service of process. The service of process in such
41 action shall not be perfected until such second original process has been served as provided
42 in this Code section. The provisions of this Code section shall be cumulative of any other
43 requirements imposed by law for the service of process or notice."

44 **SECTION 2.**

45 Said title is further amended by revising paragraph (4) of subsection (a) of Code Section
46 37-1-21, relating to institutional powers and duties, as follows:

47 ~~"(4) To appoint police of such facilities, institutions, or programs who are authorized,~~
48 ~~while on the grounds or in the buildings of the respective facilities, institutions, or~~
49 ~~programs to make arrests with the same authority, power, privilege, and duties as the~~
50 ~~sheriffs of the respective counties in which such facilities, institutions, or programs are~~
51 ~~situated. If because of the contagious or infectious nature of the disease of persons~~
52 ~~arrested facilities are not available for their detention, such police shall be authorized to~~
53 ~~confine such persons within the respective facilities, institutions, or programs pending~~
54 ~~trial as provided in other cases. After trial and conviction of any such person, he or she~~
55 ~~shall be sentenced to serve his or her term of sentence in the secured ward of the facility,~~
56 ~~institution, or program; and"~~

57 **SECTION 3.**

58 Said title is further amended by revising Code Section 37-1-28, relating to conviction data
59 for employment purposes for the Department of Behavioral Health and Developmental
60 Disabilities, as follows:

61 "37-1-28.

62 (a) As used in this Code section, the term 'conviction data' means a record of a finding or
63 verdict of guilty or a plea of guilty or a plea of nolo contendere with regard to any crime,
64 regardless of whether an appeal of the conviction has been sought.

65 (b) The department may receive from any law enforcement agency conviction data that is
66 relevant to a person whom the department; or its contractors; ~~or a district or county health~~
67 ~~agency~~ is considering as a final selectee for employment in a position the duties of which
68 involve direct care, treatment, custodial responsibilities, or any combination thereof for its
69 clients. The department may also receive conviction data which is relevant to a person
70 whom the department; or its contractors; ~~or a district or county health agency~~ is considering
71 as a final selectee for employment in a position if, in the judgment of the employer, a final
72 employment decision regarding the selectee can only be made by a review of conviction
73 data in relation to the particular duties of the position and the security and safety of clients,
74 the general public, or other employees.

75 (c) The department shall establish a uniform method of obtaining conviction data under
76 subsection (a) of this Code section which shall be applicable to the department and its
77 contractors. Such uniform method shall require the submission to the Georgia Crime
78 Information Center of fingerprints and the records search fee in accordance with Code
79 Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall
80 promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau
81 records and an appropriate report and shall promptly conduct a search of its own records
82 and records to which it has access. After receiving the fingerprints and fee, the Georgia
83 Crime Information Center shall notify the department in writing of any derogatory finding,
84 including, but not limited to, any conviction data regarding the fingerprint records check
85 or if there is no such finding.

86 (d) All conviction data received shall be for the exclusive purpose of making employment
87 decisions or decisions concerning individuals in the care of the department and shall be
88 privileged and shall not be released or otherwise disclosed to any other person or agency.
89 Immediately following the employment decisions or upon receipt of the conviction data,
90 all such conviction data collected by the department or its agent shall be maintained by the
91 department or agent pursuant to laws regarding and the rules or regulations of the Federal
92 Bureau of Investigation and the Georgia Crime Information Center, as is applicable.
93 Penalties for the unauthorized release or disclosure of any conviction data shall be as
94 prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of
95 Investigation and the Georgia Crime Information Center, as is applicable.

96 (e) The department may promulgate written rules and regulations to implement the
97 provisions of this Code section.

98 ~~(f) The department may receive from any law enforcement agency criminal history~~
 99 ~~information, including arrest and conviction data, and any and all other information which~~
 100 ~~it may be provided pursuant to state or federal law which is relevant to any person in the~~
 101 ~~care of the department. The department shall establish a uniform method of obtaining~~
 102 ~~criminal history information under this subsection. Such method shall require the~~
 103 ~~submission to the Georgia Crime Information Center of fingerprints together with any~~
 104 ~~required records search fee in accordance with Code Section 35-3-35. Upon receipt~~
 105 ~~thereof, the Georgia Crime Information Center shall promptly transmit the fingerprints~~
 106 ~~submitted by the department to the Federal Bureau of Investigation for a search of bureau~~
 107 ~~records and an appropriate report and shall promptly conduct a search of its own records~~
 108 ~~and records to which it has access. Such method shall also permit the submission of the~~
 109 ~~names alone of such persons to the proper law enforcement agency for a name based check~~
 110 ~~of such person's criminal history information as maintained by the Georgia Crime~~
 111 ~~Information Center and the Federal Bureau of Investigation. In such circumstances, the~~
 112 ~~department shall submit fingerprints of those persons together with any required records~~
 113 ~~search fee, to the Federal Bureau of Investigation within 15 calendar days of the date of the~~
 114 ~~name based check on that person. The fingerprints shall be forwarded to the Federal~~
 115 ~~Bureau of Investigation through the Georgia Crime Information Center in accordance with~~
 116 ~~Code Section 35-3-35. Following the submission of such fingerprints, the department may~~
 117 ~~receive the criminal history information, including arrest and conviction data, relevant to~~
 118 ~~such person.~~

119 ~~(g)~~(f) The department shall be authorized to conduct a name or descriptor based check of
 120 any person's criminal history information, including arrest and conviction data, and other
 121 information from the Georgia Crime Information Center regarding any adult person who
 122 provides care or is in contact with persons under the care of the department without the
 123 consent of such person and without fingerprint comparison to the fullest extent permissible
 124 by federal and state law."

125 **SECTION 4.**

126 Said title is further amended by revising Code Section 37-1-50, relating to necessity of
 127 hearing, powers of hearing examiner, and qualification, as follows:

128 "37-1-50.

129 ~~(a) No license, permit, or certificate or other similar right shall be revoked or suspended~~
 130 ~~without opportunity for a hearing as provided in Chapter 13 of Title 50, the 'Georgia~~
 131 ~~Administrative Procedure Act.'~~ Any such hearing or appeal related thereto shall be
 132 ~~conducted in accordance with such Act.~~

133 ~~(b) The department is authorized and empowered to employ and appoint hearing~~
 134 ~~examiners to conduct hearings, issue compulsory process, administer oaths, and submit~~
 135 ~~their findings and recommendations to the appointing agency; provided, however, that any~~
 136 ~~such examiner shall be a member of the State Bar of Georgia in good standing. Reserved.~~"

137 **SECTION 5.**

138 Said title is further amended by revising paragraph (2) of Code Section 37-1-70, relating to
 139 definitions relative to inspection warrants, as follows:

140 "(2) 'Mental health law' means Code Sections 37-3-7, 37-3-8, and ~~37-4-4~~ 37-4-7, Chapter
 141 6 of this title, and any rule or regulation duly promulgated thereunder."

142 **SECTION 6.**

143 Said title is further amended by revising subsection (a) of Code Section 37-2-4, relating to
 144 the Behavioral Health Coordinating Council, as follows:

145 "(a) There is created the Behavioral Health Coordinating Council. The council shall
 146 consist of the commissioner of behavioral health and developmental disabilities; the
 147 commissioner of community health; the commissioner of human services; the
 148 commissioner of juvenile justice; the commissioner of corrections; the commissioner of
 149 community affairs; the Commissioner of Labor; the State School Superintendent; the
 150 chairperson of the State Board of Pardons and Paroles; the ombudsman appointed pursuant
 151 to Code Section 37-2-32; an adult consumer of public behavioral health services, appointed
 152 by the Governor; a family member of a consumer of public behavioral health services,
 153 appointed by the Governor; a parent of a child receiving public behavioral health services,
 154 appointed by the Governor; a member of the House of Representatives, appointed by the
 155 Speaker of the House of Representatives; and a member of the Senate, appointed by the
 156 Lieutenant Governor."

157 **SECTION 7.**

158 Said title is further amended by revising paragraph (1) of subsection (a) of Code Section
 159 37-2-5.2, relating to the duties and functions of regional planning boards, as follows:

160 "(1) To prepare, in consultation with consumers and families, community programs,
 161 hospitals, other public and private providers, its regional planning board, and appropriate
 162 advisory and advocacy groups, an annual plan ~~for the funding and provision of all~~
 163 identifying the needs and priorities for disability services in the region. The plan shall
 164 be submitted to the department at a time and in the manner specified by the department
 165 so as to ensure that the plan ~~is a basis for~~ informs the annual appropriations request;"

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SECTION 8.

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Code Section 37-3-1 of the Official Code of Georgia Annotated, relating to definitions relative to the examination and treatment for mental illness, is amended by revising paragraph (16.1) as follows:

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"(16.1) 'Traumatic brain injury' means a traumatic insult to the brain and its related parts resulting in organic damage thereto which may cause physical, intellectual, emotional, social, or vocational changes in a person. It shall also be recognized that a person having a traumatic brain injury may have organic damage or physical or social disorders, but for the purposes of this chapter, traumatic brain injury shall not be considered mental illness as defined in paragraph (11) of this Code section."

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SECTION 9.

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Code Section 9-10-152 of the Official Code of Georgia Annotated, relating to grounds for continuance due to attendance at meeting of Board of Human Services, is amended as follows:

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"9-10-152.

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Should any member of the Board of Human Services or the Board of Behavioral Health and Developmental Disabilities be engaged, at the time of any meeting of the board, as counsel or party in any case pending in the courts of this state and should the case be called for trial during the regular session of the board, the absence of the member to attend the session shall be good ground for a postponement or a continuance of the case until the session of the board has come to an end."

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SECTION 10.

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Code Section 15-11-55 of the Official Code of Georgia Annotated, relating to disposition of a deprived child, is amended by revising subparagraphs (2)(B) and (2)(C) of subsection (a) as follows:

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"(B) Except for dispositions pursuant to paragraph (1) of subsection (a) of Code Section 15-11-66 and Code Section 15-11-67, ~~before transferring temporary legal custody in an order of disposition under this paragraph a reasonably diligent search for~~ within 30 days after the removal of a child from the custody of the parent or parents of the child, the Department of Human Services shall exercise due diligence to identify a parent or relative of the child or other persons who have demonstrated an ongoing commitment to the child shall be conducted by the court and the Department of Human Services. Such search shall be completed within 90 days from the date on which the child was removed from the home. All identified adult relatives of the child, subject to exceptions due to family or domestic violence, shall be provided with notice:

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- 201 (i) Specifying that the child has been or is being removed from parental custody;
 202 (ii) Explaining the options the relative has to participate in the care and placement of
 203 the child and any options that may be lost by failing to respond to the notice;
 204 (iii) Describing the process for becoming an approved foster family home and the
 205 additional services and supports available for children placed in approved foster
 206 homes; and
 207 (iv) Describing any financial assistance for which the relative may be eligible.
 208 (C) The results of such search and notification shall be documented in writing and filed
 209 with the court at by the time of the first review. During such ~~90~~ 30 day period, the
 210 court may order that the child may be placed in the temporary legal custody of the
 211 Department of Human Services or any other appropriate entity or person."

212 SECTION 11.

213 Code Section 15-11-103 of the Official Code of Georgia Annotated, relating to placement
 214 of child following termination order, is amended by revising subsection (a) as follows:

215 ~~"(a)(1) If, upon the entering of an order terminating the parental rights of a parent, there~~
 216 ~~is no parent having parental rights, the court shall first attempt to place the child with a~~
 217 ~~person related to the child by blood or marriage or with a member of the child's extended~~
 218 ~~family if such a person is willing and, after study by the probation officer or other person~~
 219 ~~or agency designated by the court, is found by the court to be qualified to receive and care~~
 220 ~~for the child, if the court determines such placement is the most appropriate for and in the~~
 221 ~~best interest of the child. A placement effected under this paragraph shall be conditioned~~
 222 ~~upon the family member who is given permanent custody or who is granted an adoption~~
 223 ~~of the child agreeing to abide by the terms and conditions of the order of the court.~~

224 ~~(2) If no placement of the child is effected under paragraph (1) of this subsection, the~~
 225 ~~court may commit the child to the custody of the Department of Human Services or to a~~
 226 ~~licensed child-placing agency willing to accept custody for the purpose of placing the~~
 227 ~~child for adoption, if the court determines such placement is the most appropriate for and~~
 228 ~~in the best interest of the child.~~

229 ~~(3) If no placement of the child is effected under paragraph (1) or (2) of this subsection,~~
 230 ~~the court may commit the child to a suitable individual on the condition that the person~~
 231 ~~becomes the guardian of the person of the child pursuant to the court's authority under~~
 232 ~~Code Section 15-11-30.1, if the court determines such placement is the most appropriate~~
 233 ~~for and in the best interest of the child.~~

234 ~~(4) If no placement of the child is effected under paragraph (1), (2), or (3) of this~~
 235 ~~subsection, the court may commit the child to the custody of the Department of Human~~
 236 ~~Services or to a licensed child-placing agency willing to accept custody for the purpose~~

237 of placing the child in a foster home, if the court determines such placement is the most
 238 appropriate for and in the best interest of the child.

239 ~~(5) If no placement of the child is effected under paragraph (1), (2), (3), or (4) of this~~
 240 ~~subsection, the court may commit the child to the custody of an agency or organization~~
 241 ~~authorized by law to receive and provide care for children which is operated in a manner~~
 242 ~~that provides such care, guidance, and control as would be provided in a family home as~~
 243 ~~defined in the court's order, if the court determines that such placement is the most~~
 244 ~~appropriate for and in the best interest of the child.~~

245 ~~(6) If no placement of the child is effected under paragraph (1), (2), (3), (4), or (5) of this~~
 246 ~~subsection, the court may take other suitable measures for the care and welfare of the~~
 247 ~~child. Upon the entering of an order terminating the parental rights of a parent, a~~
 248 ~~placement may be made only if the court finds that such placement is in the best interest~~
 249 ~~of the child and in accordance with the child's court approved permanency plan created~~
 250 ~~pursuant to Code Section 15-11-58. In determining which placement is in the child's best~~
 251 ~~interest, the court shall enter findings of fact reflecting its consideration of the following:~~

252 ~~(1) The child's need for a placement that offers the greatest degree of legal permanence~~
 253 ~~and security;~~

254 ~~(2) The least disruptive placement alternative for the child;~~

255 ~~(3) The child's sense of attachment and need for continuity of relationships; and~~

256 ~~(4) Any other factors the court deems relevant to its determination."~~

257 **SECTION 12.**

258 Code Section 17-7-130 of the Official Code of Georgia Annotated, relating to proceedings
 259 upon plea of mental incompetency to stand trial, is amended by revising subsections (a) and
 260 (b), paragraph (1) of subsection (d), and subparagraph (d)(2)(B) as follows:

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

262 (1) 'Child' means a person under the jurisdiction of the superior court pursuant to Code
 263 Section 15-11-28.

264 (2) 'Committing court' means the court which has jurisdiction over the criminal charges
 265 against the defendant.

266 (3) 'Developmental disability' shall have the same meaning as set forth in paragraph (8)
 267 of Code Section 37-1-1.

268 ~~(2)(4)~~ (4) 'Inpatient' shall have the same meaning as in paragraph (9.1) of Code Section
 269 37-3-1; provided, however, that as applied to a child for purposes of this Code section,
 270 the term shall mean a child who is mentally ill or has a developmental disability and is
 271 in need of involuntary placement.

272 ~~(3)(5)~~ (5) 'Nonviolent offense' means any offense other than:

- 273 (A)(i) Murder;
- 274 (ii) Rape;
- 275 (iii) Aggravated sodomy;
- 276 (iv) Armed robbery;
- 277 (v) Aggravated assault;
- 278 (vi) Hijacking of a motor vehicle or an aircraft;
- 279 (vii) Aggravated battery;
- 280 (viii) Aggravated sexual battery;
- 281 (ix) Aggravated child molestation;
- 282 (x) Aggravated stalking;
- 283 (xi) Arson in the first degree and in the second degree;
- 284 (xii) Stalking;
- 285 (xiii) Fleeing and attempting to elude a police officer;
- 286 (xiv) Any sexual offense against a minor; or
- 287 (xv) Any offense which involves the use of a deadly weapon or destructive device;
- 288 and

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

291 ~~(4)~~(6) 'Outpatient' shall have the same meaning as in paragraph (12.1) of Code Section
 292 37-3-1, provided that ~~the~~:

293 (A) As applied to a child for purposes of this Code section, the term shall mean a child
 294 who is mentally ill or has a developmental disability and is in need of involuntary
 295 placement; and

296 (B) The court determines that the defendant meets the criteria for release on bail or
 297 other pre-trial release pursuant to Code Section 17-6-1.

298 (b) Whenever a plea is filed that a defendant in a criminal case is mentally incompetent
 299 to stand trial, it shall be the duty of the court to cause the issue of the defendant's mental
 300 competency to stand trial to be tried first by a special jury. If the special jury finds the
 301 defendant mentally incompetent to stand trial, the court shall retain jurisdiction over the
 302 defendant but shall transfer the defendant to the Department of Behavioral Health and
 303 Developmental Disabilities and if the defendant is a child, the department shall be
 304 authorized to place such defendant in a secure hospital or secure community facility
 305 designated by the department; provided, however, that if the defendant is charged with a
 306 misdemeanor offense other than as included in subparagraph ~~(a)(3)(A)~~ (a)(5)(A) of this
 307 Code section or a nonviolent offense, the court may, in its discretion, retain jurisdiction
 308 over the defendant, and may allow evaluation to be done on an outpatient basis by the
 309 Department of Behavioral Health and Developmental Disabilities. If the court allows

310 outpatient evaluation and the defendant is in custody, the court may release the defendant
 311 in accordance with the provisions of Code Section 17-6-1, et seq."

312 "(1) ~~Refer~~ If the defendant is not a child, refer the case to the probate court for
 313 commitment proceedings pursuant to Chapter 3 or 4 of Title 37, if appropriate and if the
 314 charges are dismissed for any reason; or"

315 "(B) If the defendant is found to meet the criteria for involuntary civil commitment as
 316 an inpatient or outpatient, the judge may issue an order committing the defendant;
 317 provided, however, that if the defendant is a child, the Department of Behavioral Health
 318 and Developmental Disabilities shall be authorized to place such defendant in a secure
 319 hospital or secure community facility designated by the department.

320 (i) If the defendant so committed is charged with a misdemeanor offense, the
 321 committing court may civilly commit the defendant for a period not to exceed one
 322 year. Following the commitment period, the charges against the defendant shall be
 323 dismissed by operation of law.

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

331 **SECTION 13.**

332 Code Section 17-8-30 of the Official Code of Georgia Annotated, relating to grounds for
 333 continuances for party or party's counsel in attendance at meeting of Board of Human
 334 Services, is amended as follows:

335 "17-8-30.

336 Should any member of the Board of Human Services or the Board of Behavioral Health
 337 and Developmental Disabilities be engaged at the time of any meeting of the board as
 338 counsel or party in any case pending in the courts of this state and should the case be called
 339 for trial during the regular session of the board, ~~his~~ the absence of the member to attend the
 340 session shall be good ground for a postponement or a continuance of the case until the
 341 session of the board has ended."

342 **SECTION 14.**

343 Code Section 19-15-2 of the Official Code of Georgia Annotated, relating to child abuse
 344 protocol committee, is amended by revising subsection (j) as follows:

345 "(j) By July 1, 2001, members of each protocol committee shall receive appropriate
 346 training. As new members are appointed, they will also receive training within 12 months
 347 after their appointment. The ~~Department of Human Services~~ Office of the Child Advocate
 348 for the Protection of Children shall provide such training."

349 SECTION 15.

350 Code Section 20-2-133 of the Official Code of Georgia Annotated, relating to free public
 351 instruction in elementary and secondary education, is amended as follows:

352 "20-2-133.

353 (a) Admission to the instructional programs funded under this article shall be free to all
 354 eligible children and youth who enroll in such programs within the local school system in
 355 which they reside and to children as provided in subsection (b) of this Code section.
 356 Therefore, a local school system shall not charge resident students tuition or fees, nor shall
 357 such students be required to provide materials or equipment except for items specified by
 358 the State Board of Education, as a condition of enrollment or full participation in any
 359 instructional program. However, a local school system is authorized to charge nonresident
 360 students tuition or fees or a combination thereof; provided, however, that such charges to
 361 a student shall not exceed the average locally financed per student cost for the preceding
 362 year, excluding the local five mill share funds required pursuant to Code Section 20-2-164;
 363 provided, further, that no child in a placement operated by the Department of Human
 364 Services or the Department of Behavioral Health and Developmental Disabilities or for
 365 which payment is made by the Department of Juvenile Justice, ~~or~~ the Department of
 366 Human Services or any of its divisions, or the Department of Behavioral Health and
 367 Developmental Disabilities and no child who is in the physical or legal custody of the
 368 Department of Juvenile Justice, ~~or~~ under the care or physical or legal custody of the
 369 Department of Human Services or any of its divisions, or under the physical custody of the
 370 Department of Behavioral Health and Developmental Disabilities shall be charged tuition,
 371 fees, or a combination thereof. A local school system is further authorized to contract with
 372 a nonresident student's system of residence for payment of tuition. The amount of tuition
 373 paid directly by the system of residence shall be limited only by the terms of the contract
 374 between systems. Local units of administration shall provide textbooks or any other
 375 reading materials to each student enrolled in a class which has a course of study that
 376 requires the use of such materials by the students.

377 (b)(1) Any child, except a child in a youth development center as specifically provided
 378 in this paragraph, who is in the physical or legal custody of the Department of Juvenile
 379 Justice or the Department of Human Services, or in a placement operated by the
 380 Department of Human Services or the Department of Behavioral Health and

381 Developmental Disabilities, or in a facility or placement paid for by the Department of
382 Juvenile Justice, ~~or~~ the Department of Human Services or any of its divisions, or the
383 Department of Behavioral Health and Developmental Disabilities and who is physically
384 present within the geographical area served by a local unit of administration for any
385 length of time is eligible for enrollment in the educational programs of that local unit of
386 administration; provided, however, that the child meets the age eligibility requirements
387 established by this article. The local unit of administration of the school district in which
388 such child is present shall be responsible for the provision of all educational programs,
389 including special education and related services, at no charge as long as the child is
390 physically present in the school district. A child will be considered in the physical or
391 legal custody of the Department of Juvenile Justice or the Department of Human Services
392 or any of its divisions if custody has been awarded either temporarily or permanently by
393 court order or by voluntary agreement, or if the child has been admitted or placed
394 according to an individualized treatment or service plan of the Department of Human
395 Services. A child will be considered in a facility or placement paid for or operated by the
396 Department of Behavioral Health and Developmental Disabilities if the child has been
397 admitted or placed according to an individualized treatment or service plan of the
398 Department of Behavioral Health and Developmental Disabilities. No child in a youth
399 development center, regardless of his or her custody status, shall be eligible for
400 enrollment in the educational programs of the local unit of administration of the school
401 district in which that youth development center is located. No child or youth in the
402 custody of the Department of Corrections or the Department of Juvenile Justice and
403 confined in a facility as a result of a sentence imposed by a court shall be eligible for
404 enrollment in the educational programs of the local unit of administration of the school
405 district where such child or youth is being held.

406 (2) Except as otherwise provided in this Code section, placement in a facility by a parent
407 or by another local unit of administration shall not create an obligation, financial or
408 otherwise, on the part of the local unit of administration in which the facility is located
409 to educate the child.

410 (3) For any child described in paragraph (1) of this subsection, the custodian of or
411 placing agency for the child shall notify the appropriate local unit of administration at
412 least five days in advance of the move, when possible, when the child is to be moved
413 from one local unit of administration to another.

414 (4) When the custodian of or placing agency for any child notifies a local unit of
415 administration, as provided in paragraph (3) of this subsection, that the child may become
416 eligible for enrollment in the educational programs of a local unit of administration, such
417 local unit of administration shall request the transfer of the educational records and

418 Individualized Education Programs (IEP's) and all education related evaluations,
419 assessments, social histories, and observations of the child from the appropriate local unit
420 of administration no later than ten days after receiving notification. Notwithstanding any
421 other law to the contrary, the custodian of the records has the obligation to transfer these
422 records and the local unit of administration has the right to receive, review, and utilize
423 these records. Notwithstanding any other law to the contrary, upon the request of a local
424 unit of administration responsible for providing educational services to a child described
425 in paragraph (1) of this subsection, the Department of Juvenile Justice, the Department
426 of Behavioral Health and Developmental Disabilities, or the Department of Human
427 Services shall furnish to the local unit of administration all medical and educational
428 records in the possession of the Department of Juvenile Justice, the Department of
429 Behavioral Health and Developmental Disabilities, or the Department of Human Services
430 pertaining to any such child, except where consent of a parent or legal guardian is
431 required in order to authorize the release of any of such records, in which event the
432 Department of Juvenile Justice, the Department of Behavioral Health and Developmental
433 Disabilities, or the Department of Human Services shall obtain such consent from the
434 parent or guardian prior to such release.

435 (5) Any local unit of administration which serves a child pursuant to paragraph (1) of this
436 subsection shall receive in the form of annual grants in state funding for that child the
437 difference between the actual state funds received for that child pursuant to Code Section
438 20-2-161 and the reasonable and necessary expenses incurred in educating that child,
439 calculated pursuant to regulations adopted by the State Board of Education. Each local
440 board of education shall be held harmless by the state from expending local funds for
441 educating students pursuant to this Code section; provided, however, that this shall only
442 apply to students who are unable to leave the facility in which they have been placed.

443 (6) Enrollment of an eligible child pursuant to this Code section shall be effectuated in
444 accordance with rules and regulations adopted by the State Board of Education.

445 (7) The Department of Education, the Department of Human Services, the Department
446 of Juvenile Justice, the Department of Behavioral Health and Developmental Disabilities,
447 and the local units of administration where Department of Education, Department of
448 Juvenile Justice, Department of Behavioral Health and Developmental Disabilities, or
449 Department of Human Services placements, facilities, or contract facilities are located
450 shall jointly develop procedures binding on all agencies implementing the provisions of
451 this Code section applicable to children and youth in the physical or legal custody of the
452 Department of Juvenile Justice or under the care or physical or legal custody of the
453 Department of Human Services or under the physical custody of the Department of
454 Behavioral Health and Developmental Disabilities."

SECTION 16.

Code Section 20-2-250 of the Official Code of Georgia Annotated, relating to projects to improve effectiveness, is amended by revising subsection (d) as follows:

"(d)(1) In order to better address the needs of students at risk of failing to complete their education, the State Board of Education shall approve pilot projects that allow schools, clusters of schools, or school systems to decategorize funds received under Code Section 20-2-161. The state board shall appoint an interdisciplinary review panel consisting of students, parents, educators, and representatives from business, the community, ~~and the Department of Human Services,~~ and the Department of Behavioral Health and Developmental Disabilities to evaluate all submitted proposals and to submit appropriate recommendations to the state board.

(2) Pilot projects must meet the following criteria:

(A) Address the needs of at-risk students who meet two or more of the criteria in the definition of the at-risk student as approved by the State Board of Education;

(B) Develop a plan for such a pilot project using an interdisciplinary committee composed of students, parents, educators, and representatives from business, the community, the Department of Human Services, the Department of Behavioral Health and Developmental Disabilities, and others as appropriate;

(C) Ensure that the plan for the pilot project becomes a component of the local strategic plan;

(D) Provide for a program evaluation that specifies the goals of the program, the means to achieve those goals, the reasons for any decategorization or combining of program earnings to carry out those means, and objective and other criteria to be met which will determine the success or failure of the new programs;

(E) No funds may be expended for any program or service explicitly excluded from the full-time equivalent count in subsection (a) of Code Section 20-2-160, except that such funds will be expended in conformity with the requirements for expenditures of direct instructional costs under Code Section 20-2-167. Any local plan approved by the board to combine program earnings for the purpose of providing programs for at-risk students under this subsection must also conform with the expenditure controls under Code Section 20-2-167 as modified by the new program categories described in the local system's proposal to the board. In no event will the aggregate funds expended for direct instructional costs be a lower amount than would have been required under the original formula calculations and expenditure requirements; and

(F) No funds may be expended for transitional programs, such as transitional kindergarten or first grade.

- 491 (3) The state board shall give priority to proposed pilot projects that focus on interagency
 492 cooperation and the joint provision of services.
- 493 (4) All pilot projects shall be reviewed annually by the state board to ensure that they are
 494 meeting the goals and objectives outlined in their plan. Pilot projects that are no longer
 495 achieving their goals and objectives shall be discontinued by the state board.
- 496 (5) The pilot projects shall report annually to the Appropriations Committees of the
 497 House of Representatives and the Senate, the House Education Committee, and the
 498 Senate Education and Youth Committee."

499 **SECTION 17.**

500 Code Section 20-3-513 of the Official Code of Georgia Annotated, relating to determination
 501 of amount of medical scholarships by the State Medical Education Board, is amended as
 502 follows:

503 "20-3-513.

504 Students whose applications are approved shall receive a loan or scholarship in an amount
 505 to be determined by the State Medical Education Board to defray the tuition and other
 506 expenses of the applicant in an accredited four-year medical school in the United States
 507 which has received accreditation or provisional accreditation by the Liaison Committee on
 508 Medical Education of the American Medical Association or the Bureau of Professional
 509 Education of the American Osteopathic Association for a program in medical education
 510 designed to qualify the graduate for licensure by the Georgia Composite Medical Board.
 511 The loans and scholarships shall be paid in such manner as the State Medical Education
 512 Board shall determine and may be prorated so as to pay to the medical college or school
 513 to which any applicant is admitted such funds as are required by that college or school with
 514 the balance being paid directly to the applicant; all of which shall be under such terms and
 515 conditions as may be provided under rules and regulations of the State Medical Education
 516 Board. The loans or scholarships to be granted to each applicant shall be based upon the
 517 condition that the full amount of the loans or scholarships shall be repaid to the State of
 518 Georgia in services to be rendered by the applicant by practicing his or her profession in
 519 a State Medical Education Board approved rural county in Georgia of 35,000 population
 520 or less according to the United States decennial census of 1990 or any future such census
 521 or at any hospital or facility operated by or under the jurisdiction of the Department of
 522 Community Health or the Department of Behavioral Health and Developmental Disabilities
 523 or at any facility operated by or under the jurisdiction of the Department of Corrections or
 524 at any facility operated by or under the jurisdiction of the Department of Juvenile Justice.
 525 For each year of practicing his or her profession in such State Medical Education Board

526 approved location, the applicant shall receive credit for the amount of the scholarship
527 received during any one year in medical school, with the interest due on such amount."

528 **SECTION 18.**

529 Code Section 31-33-4 of the Official Code of Georgia Annotated, relating to mental health
530 records, is amended as follows:

531 "31-33-4.

532 The provisions of this chapter, except as otherwise provided in Code Sections 31-33-7 and
533 31-33-8, shall not apply to psychiatric, psychological, or other mental health records of a
534 patient."

535 **SECTION 19.**

536 Code Section 31-33-8 of the Official Code of Georgia Annotated, relating to electronic
537 records, is amended as follows:

538 "31-33-8.

539 (a) Notwithstanding any other provision of the law to the contrary, any provider may, in
540 its sole discretion, create, maintain, transmit, receive, and store records in an electronic
541 format within the meaning of Code Section 10-12-2 and may, in its sole discretion,
542 temporarily or permanently convert records into an electronic format.

543 (b) A provider shall not be required to maintain separate tangible copies of electronically
544 stored records.

545 (c) The other provisions of this chapter shall apply to electronic records to the same extent
546 as those provisions apply to tangible records.

547 (d) This Code section is subject to all applicable federal laws governing the security and
548 confidentiality of a patient's personal health information.

549 ~~(d)~~(e) A tangible copy of a record reproduced from an electronically stored record shall
550 be considered an original for purposes of providing copies to patients or other authorized
551 parties and for introduction of the records into evidence in administrative or court
552 proceedings.

553 ~~(e)~~(f) Except as provided otherwise under federal law, upon receiving a request for a copy
554 of a record from a patient or an authorized person under Code Section 31-33-3, a provider
555 shall provide copies of the record in either tangible or electronically stored form.

556 (g) Subsections (a), (b), (d) and (e) of this Code section shall apply to psychiatric,
557 psychological, or other mental health records of a patient."

558

SECTION 20.

559

Code Section 45-9-4 of the Official Code of Georgia Annotated, relating to the commissioner of administrative services to purchase insurance or indemnity contracts, is amended by revising subsection (g) as follows:

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"(g) The policy of insurance provided for in this Code section may also provide liability coverage to nonprofit agencies and their employees, which agencies have contracted with the Department of Juvenile Justice, the Department of Transportation, the Department of Behavioral Health and Developmental Disabilities, or the Department of Human Services to furnish certain services; provided, however, that such liability coverage shall be limited to damages arising out of the authorized use of a state-owned vehicle or a vehicle funded pursuant to subsection (a) of Code Section 49-2-13.1 by an employee of such nonprofit agency during the course of such person's employment with such nonprofit agency and the cost of such insurance furnished to any such nonprofit agency and its employees shall be allocated to and paid by such agency before any coverage shall be effective. For the purpose of this Code section, 'nonprofit agency' means any nonprofit or charitable organization, association, corporation, partnership, or other entity registered pursuant to Section 501(c)(3) of the Internal Revenue Code."

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SECTION 21.

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Code Section 50-5-69 of the Official Code of Georgia Annotated, relating to purchases without competitive bidding, is amended by revising subsection (a) as follows:

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"(a) If the needed supplies, materials, equipment, or service can reasonably be expected to be acquired for less than \$5,000.00 and is not available on state contracts or through statutorily required sources, the purchase may be effectuated without competitive bidding. The commissioner of administrative services may by rule and regulation authorize the various offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf and may provide the circumstances and conditions under which such purchases may be effected. In order to assist and advise the commissioner of administrative services in making determinations to allow offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf, there is created a Purchasing Advisory Council consisting of the executive director of the Georgia Technology Authority or his or her designee; the director of the Office of Planning and Budget or his or her designee; the chancellor of the University System of Georgia or his or her designee; the commissioner of technical and adult education or his or her designee; the commissioner of transportation or his or her designee; the Secretary of State or his or her designee; the commissioner of human services or his or her designee; the

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594 commissioner of community health or his or her designee; the commissioner of behavioral
 595 health and developmental disabilities or his or her designee; and one member to be
 596 appointed by the Governor. The commissioner of administrative services shall promulgate
 597 the necessary rules and regulations governing meetings of such council and the method and
 598 manner in which such council will assist and advise the commissioner of administrative
 599 services."

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SECTION 22.

601

Code Section 50-5-135 of the Official Code of Georgia Annotated, relating to the creation
 602 of the State Use Council, is amended by revising subsections (a) and (b) as follows:

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"(a) There is created the State Use Council, hereafter referred to as the council. The
 604 council shall be composed of ~~15~~ 16 members as follows:

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(1) The commissioner of administrative services or his or her designee;

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(2) The commissioner of human services or his or her designee;

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(2.1) The commissioner of behavioral health and developmental disabilities or his or her
 608 designee;

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(3) The commissioner of community affairs or his or her designee;

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(4) The commissioner of corrections or his or her designee;

611

(5) Five members appointed by the Governor who shall represent the business
 612 community of the state;

613

(6) Three members appointed by the Governor who shall represent a broad spectrum of
 614 persons with disabilities; and

615

(7) Three members appointed by the Governor who shall represent the interest of
 616 organizations representative of persons with disabilities.

617

(b) Initially, the ~~nine~~ eleven members appointed pursuant to paragraphs (5) through (7) in
 618 subsection (a) of this Code section shall serve staggered terms of office as follows: ~~three~~
 619 four members for two years, ~~three~~ four members for three years, and three members for
 620 four years. Thereafter, each member shall serve for a term of four years. Such members
 621 shall serve until the appointment and qualification of their successors. The members
 622 appointed by the Governor shall be selected from the state at large but shall be
 623 representative of all of the geographic areas of the state."

624

SECTION 23.

625

Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public
 626 disclosure under open records laws is not required, is amended by revising paragraph (2) of
 627 subsection (c) as follows:

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