

Senate Bill 391

By: Senators Unterman of the 45th and Hill of the 4th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 17-7-130 of the Official Code of Georgia Annotated, relating to
2 proceedings upon plea of mental incompetency to stand trial, so as to revise and add
3 definitions; to provide for certain children found incompetent to stand trial; to provide for
4 related matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

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

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

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

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

17 (2)(4) 'Inpatient' shall have the same meaning as in paragraph (9.1) of Code Section
18 37-3-1; provided, however, that as applied to a child for purposes of this Code section,
19 the term shall mean a child who is mentally ill or has a developmental disability and is
20 in need of involuntary placement.

21 (3)(5) 'Nonviolent offense' means any offense other than:

22 (A)(i) Murder;

23 (ii) Rape;

24 (iii) Aggravated sodomy;

25 (iv) Armed robbery;

26 (v) Aggravated assault;

- 27 (vi) Hijacking of a motor vehicle or an aircraft;
- 28 (vii) Aggravated battery;
- 29 (viii) Aggravated sexual battery;
- 30 (ix) Aggravated child molestation;
- 31 (x) Aggravated stalking;
- 32 (xi) Arson in the first degree and in the second degree;
- 33 (xii) Stalking;
- 34 (xiii) Fleeing and attempting to elude a police officer;
- 35 (xiv) Any sexual offense against a minor; or
- 36 (xv) Any offense which involves the use of a deadly weapon or destructive device;
- 37 and
- 38 (B) Those felony offenses deemed by the committing court to involve an allegation of
- 39 actual or potential physical harm to another person.
- 40 ~~(4)~~(6) 'Outpatient' shall have the same meaning as in paragraph (12.1) of Code Section
- 41 37-3-1, provided that ~~the~~:
- 42 (A) As applied to a child for purposes of this Code section, the term shall mean a child
- 43 who is mentally ill or has a developmental disability and is in need of involuntary
- 44 placement; and
- 45 (B) The court determines that the defendant meets the criteria for release on bail or
- 46 other pre-trial release pursuant to Code Section 17-6-1.
- 47 (b) Whenever a plea is filed that a defendant in a criminal case is mentally incompetent
- 48 to stand trial, it shall be the duty of the court to cause the issue of the defendant's mental
- 49 competency to stand trial to be tried first by a special jury. If the special jury finds the
- 50 defendant mentally incompetent to stand trial, the court shall retain jurisdiction over the
- 51 defendant but shall transfer the defendant to the Department of Behavioral Health and
- 52 Developmental Disabilities and if the defendant is a child, the department shall be
- 53 authorized to place such defendant in a secure hospital or community facility designated
- 54 by the department; provided, however, that if the defendant is charged with a misdemeanor
- 55 offense other than as included in subparagraph ~~(a)(3)(A)~~ (a)(5)(A) of this Code section or
- 56 a nonviolent offense, the court may, in its discretion, retain jurisdiction over the defendant,
- 57 and may allow evaluation to be done on an outpatient basis by the Department of
- 58 Behavioral Health and Developmental Disabilities. If the court allows outpatient
- 59 evaluation and the defendant is in custody, the court may release the defendant in
- 60 accordance with the provisions of Code Section 17-6-1, et seq."
- 61 "(1) ~~Refer~~ If the defendant is not a child, refer the case to the probate court for
- 62 commitment proceedings pursuant to Chapter 3 or 4 of Title 37, if appropriate and if the
- 63 charges are dismissed for any reason; or"

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

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

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

80 **SECTION 2.**

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