

House Bill 421

By: Representatives Welch of the 110<sup>th</sup>, Willard of the 49<sup>th</sup>, Manning of the 32<sup>nd</sup>, and Atwood of the 179<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure,  
2 so as to change provisions relating to the proceedings upon a plea of mental incompetency  
3 to stand trial; to provide for definitions and the use of consistent terminology; to provide for  
4 a bench trial for competency proceedings; to clarify procedures for competency evaluations;  
5 to provide that an accused determined to be mentally competent to stand trial may be housed  
6 by the Department of Behavioral Health and Developmental Disabilities under certain  
7 circumstances; to provide for maximum commitment to the Department of Behavioral Health  
8 and Developmental Disabilities under certain circumstances; to reorganize the Code relative  
9 to competency evaluations and procedures; to provide for a court to request a competency  
10 evaluation under certain circumstances; to amend the "Crime Victims' Bill of Rights" so as  
11 to change provisions relating to victim notification from the Department of Behavioral  
12 Health and Developmental Disabilities; to provide for related matters; to repeal conflicting  
13 laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is  
17 amended by revising Code Section 17-7-130, relating to the proceedings upon a plea of  
18 mental incompetency to stand trial, as follows:

19 "17-7-130.

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

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

23 (2) 'Civil commitment' means the accused's involuntary commitment pursuant to Chapter  
24 3 or 4 of Title 37, as appropriate.

25 ~~(2)(3) 'Court'~~ ~~'Committing court'~~ means the court which has jurisdiction over the criminal  
26 charges against the defendant accused.

27 ~~(3)~~(4) 'Department' means the Department of Behavioral Health and Developmental  
 28 Disabilities.

29 (5) 'Developmental disability' shall have the same meaning as set forth in paragraph (8)  
 30 of Code Section 37-1-1.

31 ~~(4)~~(6) 'Inpatient' shall have the same meaning as in paragraph (9.1) of Code Section  
 32 37-3-1; provided, however, that as applied to a child for purposes of this Code section,  
 33 the term shall mean a child who is mentally ill or has a developmental disability and is  
 34 in need of involuntary placement.

35 ~~(5)~~(7) 'Nonviolent offense' means any offense other than: a violent offense.

36 ~~(A)(i) Murder;~~

37 ~~(ii) Rape;~~

38 ~~(iii) Aggravated sodomy;~~

39 ~~(iv) Armed robbery;~~

40 ~~(v) Aggravated assault;~~

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

42 ~~(vii) Aggravated battery;~~

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

44 ~~(ix) Aggravated child molestation;~~

45 ~~(x) Aggravated stalking;~~

46 ~~(xi) Arson in the first degree and in the second degree;~~

47 ~~(xii) Stalking;~~

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

49 ~~(xiv) Any sexual offense against a minor; or~~

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

51 and

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

54 ~~(6)~~(8) 'Outpatient' shall have the same meaning as in paragraph (12.1) of Code Section  
 55 37-3-1, provided that:

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

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

61 (9) 'Serious violent felony' shall have the same meaning as set forth in Code Section  
 62 17-10-6.1.

63 (10) 'Sexual offense' shall have the same meaning as set forth in Code Section 17-10-6.2.

- 64 (11) 'Violent offense' means:  
 65 (A)(i) A serious violent felony;  
 66 (ii) A sexual offense;  
 67 (iii) Criminal attempt to commit a serious violent felony;  
 68 (iv) Criminal attempt to commit a sexual offense;  
 69 (v) Aggravated assault;  
 70 (vi) Hijacking of a motor vehicle or an aircraft;  
 71 (vii) Aggravated battery;  
 72 (viii) Aggravated stalking;  
 73 (ix) Arson in the first degree or in the second degree;  
 74 (x) Stalking;  
 75 (xi) Fleeing and attempting to elude a police officer;  
 76 (xii) Any offense which involves the use of a deadly weapon or destructive device;  
 77 and  
 78 (B) Those felony offenses deemed by the court to involve an allegation of actual or  
 79 potential physical harm to another person.
- 80 ~~(b) Whenever a plea is filed that a defendant in a criminal case is mentally incompetent~~  
 81 ~~to stand trial, it shall be the duty of the court to cause the issue of the defendant's mental~~  
 82 ~~competency to stand trial to be tried first by a special jury. If the special jury finds the~~  
 83 ~~defendant mentally incompetent to stand trial, the court shall retain jurisdiction over the~~  
 84 ~~defendant but shall transfer the defendant to the Department of Behavioral Health and~~  
 85 ~~Developmental Disabilities and if the defendant is a child, the department shall be~~  
 86 ~~authorized to place such defendant in a secure hospital or secure community facility~~  
 87 ~~designated by the department; provided, however, that if the defendant is charged with a~~  
 88 ~~misdemeanor offense other than as included in subparagraph (a)(5)(A) of this Code section~~  
 89 ~~or a nonviolent offense, the court may, in its discretion, retain jurisdiction over the~~  
 90 ~~defendant, and may allow evaluation to be done on an outpatient basis by the Department~~  
 91 ~~of Behavioral Health and Developmental Disabilities. If the court allows outpatient~~  
 92 ~~evaluation and the defendant is in custody, the court may release the defendant in~~  
 93 ~~accordance with the provisions of Code Section 17-6-1, et seq.~~
- 94 ~~(c) Within 90 days after the Department of Behavioral Health and Developmental~~  
 95 ~~Disabilities has received actual custody of a defendant or, in the case of an outpatient, a~~  
 96 ~~court order requiring evaluation of a defendant pursuant to subsection (b) of this Code~~  
 97 ~~section, the defendant shall be evaluated and a diagnosis made as to whether the defendant~~  
 98 ~~is presently mentally incompetent to stand trial and, if so, whether there is a substantial~~  
 99 ~~probability that the defendant will attain mental competency to stand trial in the foreseeable~~  
 100 ~~future. If the defendant is found to be mentally competent to stand trial, the department~~

101 shall immediately report that finding and the reasons therefor to the committing court; and  
102 the defendant shall be returned to the court as provided for in subsection (f) of this Code  
103 section.

104 (d) If the defendant is found to be mentally incompetent to stand trial by the Department  
105 of Behavioral Health and Developmental Disabilities and there is not a substantial  
106 probability that the person will attain competency in the foreseeable future, the department  
107 shall return the physical custody of the defendant to a law enforcement officer of the  
108 jurisdiction of the court which committed the defendant unless in the opinion of the  
109 department's attending physician, and with concurrence of the court, such detention by law  
110 enforcement would be detrimental to the well-being of the defendant, in which case the  
111 defendant may be held by the department until the date of the defendant's hearing. The  
112 department shall report to the committing court the finding regarding competency, the  
113 reasons therefor, and its opinion as to whether the defendant currently meets criteria for  
114 commitment as an inpatient or as an outpatient pursuant to Chapter 3 or 4 of Title 37. The  
115 law enforcement officer of the jurisdiction of the court which committed the defendant  
116 shall retain custody of the defendant and the committing court may order an independent  
117 evaluation of the defendant by a court appointed licensed clinical psychologist or  
118 psychiatrist, who shall report to the court in writing as to the current mental and emotional  
119 condition of the defendant. Based on consideration of all evidence and all reports, the  
120 committing court may:

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

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

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

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

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

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

149 ~~The Department of Behavioral Health and Developmental Disabilities shall report~~  
 150 ~~annually to the committing court on whether the civilly committed defendant continues~~  
 151 ~~to meet criteria for involuntary commitment as an inpatient or an outpatient pursuant to~~  
 152 ~~Chapter 3 or 4 of Title 37. The committing court shall review the case and enter an~~  
 153 ~~appropriate order, either to renew the inpatient or outpatient civil commitment, to change~~  
 154 ~~the commitment either from inpatient to outpatient or from outpatient to inpatient, or in~~  
 155 ~~the event charges are dismissed, transfer the jurisdiction of the case to the probate court~~  
 156 ~~for further proceedings pursuant to Title 37, if appropriate.~~

157 ~~(e) If the defendant is found to be mentally incompetent to stand trial but there is a~~  
 158 ~~substantial probability that the person will attain competency in the foreseeable future, by~~  
 159 ~~the end of the 90 day period, or at any prior time, the department shall report that finding~~  
 160 ~~and the reasons therefor to the committing court and shall retain custody over the defendant~~  
 161 ~~for the purpose of continued treatment for an additional period not to exceed nine months;~~  
 162 ~~provided, however, that if the defendant is charged with a misdemeanor offense or a~~  
 163 ~~nonviolent offense, the court shall retain jurisdiction over the defendant, but may, in its~~  
 164 ~~discretion, allow continued treatment to be done on an outpatient basis by the Department~~  
 165 ~~of Behavioral Health and Developmental Disabilities. The department shall monitor the~~  
 166 ~~defendant's outpatient treatment for an additional period not to exceed nine months. If, by~~  
 167 ~~the end of the nine-month period or at any prior time if the defendant's condition warrants,~~  
 168 ~~the defendant is still found not to be competent to stand trial, irrespective of the probability~~  
 169 ~~of recovery in the foreseeable future, the department shall report that finding and the~~  
 170 ~~reasons therefor to the committing court. The committing court shall then follow the~~  
 171 ~~procedures in subsection (d) of this Code section for further commitment or release.~~

172 ~~(f)(1) If the defendant found to be mentally incompetent to stand trial is at any time~~  
 173 ~~found by the Department of Behavioral Health and Developmental Disabilities to be~~  
 174 ~~mentally competent to stand trial, the committing court shall be notified. A defendant~~

175 ~~who is an inpatient and is found by the Department of Behavioral Health and~~  
 176 ~~Developmental Disabilities to be mentally competent to stand trial shall be discharged~~  
 177 ~~into the custody of a law enforcement officer of the jurisdiction of the court which~~  
 178 ~~committed the defendant to the department unless the charges which led to the~~  
 179 ~~commitment have been dismissed, in which case the defendant shall be discharged. In~~  
 180 ~~the event a law enforcement officer does not appear and take custody of the defendant~~  
 181 ~~within 20 days after notice to the appropriate law enforcement official in the jurisdiction~~  
 182 ~~of the committing court, the presiding judge of the committing court, and the prosecuting~~  
 183 ~~attorney for the court, the department shall itself return the defendant to one of the~~  
 184 ~~committing court's detention facilities; and the cost of returning the defendant shall be~~  
 185 ~~paid by the county in which the committing court is located. All notifications shall be~~  
 186 ~~sent by certified mail or statutory overnight delivery, return receipt requested. With the~~  
 187 ~~concurrence of the appropriate court and upon the recommendation of the department's~~  
 188 ~~attending physician, any defendant discharged as competent to stand trial may be held by~~  
 189 ~~the department instead of at the court's detention facilities whenever, in the attending~~  
 190 ~~physician's opinion, such detention in the court's facilities would be detrimental to the~~  
 191 ~~well-being of the defendant so committed. Such alternative detention shall continue only~~  
 192 ~~until the date of the defendant's trial.~~

193 ~~(2) A defendant who is an outpatient and is found by the Department of Behavioral~~  
 194 ~~Health and Developmental Disabilities to be mentally competent to stand trial may~~  
 195 ~~remain in the community under conditions of bond or other conditions ordered by the~~  
 196 ~~committing court, if any, until the date of the person's trial.~~

197 ~~(g) Any person found by the Department of Behavioral Health and Developmental~~  
 198 ~~Disabilities to be mentally competent to stand trial returned to the court as provided in~~  
 199 ~~subsection (f) of this Code section shall again be entitled to file a special plea as provided~~  
 200 ~~for in this Code section.~~

201 ~~(h) If a defendant is found to be mentally incompetent to stand trial, whether or not~~  
 202 ~~committed pursuant to this Code section, the state may file at any time a motion for~~  
 203 ~~rehearing on the issue of the defendant's mental competency. The court shall grant said~~  
 204 ~~motion upon a showing by the state that there are reasonable grounds to believe that the~~  
 205 ~~defendant's mental condition has changed. If this motion is granted, the case shall proceed~~  
 206 ~~as provided in subsection (b) of this Code section.~~

207 (b)(1) Whenever the accused in a criminal case files a special plea alleging that the  
 208 accused is mentally incompetent to stand trial, it shall be the duty of the court to have a  
 209 bench trial to determine the accused's competency to stand trial.

210 (2) The court shall order the department to conduct an evaluation by a department  
 211 physician or licensed psychologist to determine the accused's mental competency to stand

212 trial and, if such physician or licensed psychologist determines the accused to be mentally  
213 incompetent to stand trial, to make recommendations as to restoring the accused to  
214 competency. The department's evaluation shall be submitted to the court, the attorney for  
215 the accused or if pro se, to the accused, and to the prosecuting attorney, but otherwise, the  
216 evaluation shall be under seal and shall not be released to any other person absent a court  
217 order.

218 (3) The court shall conduct a bench trial to determine the accused's mental competency  
219 to stand trial within 45 days of the court's receipt of the department's evaluation.

220 (c) Within 90 days after the department has received actual custody of an accused or, in  
221 the case of an outpatient, a court order requiring evaluation of an accused, a department  
222 physician or licensed psychologist shall evaluate and diagnose the accused as to whether  
223 the accused is presently mentally incompetent to stand trial and, if so, whether there is a  
224 substantial probability that the accused will attain mental competency to stand trial in the  
225 foreseeable future. If the accused is a child, the department shall be authorized to place  
226 such child in a secure facility designated by the department.

227 (1) If the evaluation shows that the accused is mentally competent to stand trial, the  
228 department shall immediately report that determination and the reasons therefor to the  
229 court, the attorney for the accused or if pro se, to the accused, and to the prosecuting  
230 attorney. The accused shall be returned to the court as provided for in subsection (d) of  
231 this Code section.

232 (2) If the evaluation shows that the accused is mentally incompetent to stand trial and  
233 that there is not a substantial probability that the accused will attain competency in the  
234 foreseeable future, the court shall follow the procedures set forth in subsection (e) of this  
235 Code section for civil commitment or release.

236 (3) If the evaluation shows that the accused is mentally incompetent to stand trial but  
237 there is a substantial probability that the accused will attain competency in the  
238 foreseeable future, by the end of the 90 day period, or at any prior time, the department  
239 shall report that finding and the reasons therefor to the court and shall retain custody over  
240 the accused for the purpose of continued treatment for an additional period not to exceed  
241 nine months; provided, however, that if the accused is charged with a misdemeanor  
242 offense or a nonviolent offense, the court shall retain jurisdiction over the accused but  
243 may, in its discretion, allow continued treatment to be done on an outpatient basis by the  
244 department. The department shall monitor the accused's outpatient treatment for the  
245 additional period not to exceed nine months. If, by the end of the nine-month period or  
246 at any prior time the accused's condition warrants, the accused is still determined by the  
247 department physician or licensed psychologist to be mentally incompetent to stand trial,  
248 irrespective of the probability of recovery in the foreseeable future, the department shall

249 report that finding and the reasons therefor to the court. The court shall then follow the  
250 procedures in subsection (e) of this Code section for civil commitment or release.

251 (d)(1) If the department's physician or licensed psychologist determines that the accused  
252 is mentally competent to stand trial, the accused shall be discharged into the custody of  
253 a sheriff of the jurisdiction of the court unless the charges which led to the evaluation or  
254 civil commitment have been dismissed, in which case, the accused shall be discharged.  
255 In the event a sheriff does not appear and take custody of the accused within 20 days after  
256 notice to the appropriate sheriff of the jurisdiction of the court, the presiding judge of the  
257 court, and the prosecuting attorney for the court, the department shall itself return the  
258 accused to one of the court's detention facilities, and the cost of returning the accused  
259 shall be paid by the county in which the court is located. All notifications under this  
260 paragraph shall be sent by certified mail or statutory overnight delivery, return receipt  
261 requested. As an alternative to returning the accused to the sheriff of the jurisdiction of  
262 the court, the court may order the department to hold the accused at the department's  
263 secure facility instead of at the court's detention facilities whenever a department  
264 physician or licensed psychologist provides written notice to the court that such detention  
265 in the court's facilities would be detrimental to the well-being of the accused. Such  
266 alternative detention shall continue only until the date of the accused's bench trial.  
267 Regardless of where the accused is held, the court shall hold a bench trial to determine  
268 the accused's mental incompetency to stand trial within 45 days of receiving the  
269 department's evaluation.

270 (2) If the accused is an outpatient and the department's physician or licensed psychologist  
271 determines that the accused is mentally competent to stand trial, the accused may remain  
272 in the community under conditions of bond or other conditions ordered by the court, if  
273 any, until the date of the accused's bench trial, which shall be within 45 days of the court  
274 receiving the department's evaluation.

275 (3) If the department's physician or licensed psychologist determines that the accused is  
276 mentally incompetent to stand trial but later determines that the accused is mentally  
277 competent to stand trial, the court shall be so notified and shall order the accused detained  
278 or discharged in accordance with paragraph (1) of this subsection.

279 (e) If the evaluation performed pursuant to subsection (b) of this Code section shows that  
280 the accused is mentally incompetent to stand trial and that there is not a substantial  
281 probability that the accused will attain competency in the foreseeable future:

282 (1) If the accused is charged with a misdemeanor, the department shall return the  
283 physical custody of the accused to a sheriff of the jurisdiction of the court; provided,  
284 however, that as an alternative to returning the accused to the sheriff of the jurisdiction  
285 of the court, the court may order the department to hold the accused at the department's

286 secure facility instead of at the court's detention facilities whenever a department  
287 physician or licensed psychologist provides written notice to the court that such detention  
288 in the court's facilities would be detrimental to the well-being of the accused. Such  
289 alternative detention shall continue only until the date of the accused's bench trial.  
290 Regardless of where the accused is held, the court shall hold a bench trial to determine  
291 the accused's mental competency to stand trial within 45 days of receiving the  
292 department's evaluation. Based on consideration of all of the evidence introduced at the  
293 bench trial, the court may:

294 (A) Request that the department petition the probate court of the jurisdiction of the  
295 accused's residence for civil commitment of the accused; or

296 (B) If the court finds that the accused does not meet the criteria for civil commitment,  
297 the accused shall be released in accordance with the provisions of Chapter 6 of this title;

298 or

299 (2) If the accused is charged with a felony, the department shall return the physical  
300 custody of the accused to a sheriff of the jurisdiction of the court; provided, however, that  
301 as an alternative to returning the accused to the sheriff of the jurisdiction of the court, the  
302 court may order the department to hold the accused at the department's secure facility  
303 instead of at the court's detention facilities whenever a department physician or licensed  
304 psychologist provides written notice to the court that such detention in the court's  
305 facilities would be detrimental to the well-being of the accused. Such alternative  
306 detention shall continue only until the date of the accused's bench trial. Regardless of  
307 where the accused is held, the court shall hold a bench trial to determine the accused's  
308 mental competency to stand trial within 45 days of receiving the department's evaluation.  
309 The department shall report to the court its finding regarding the accused's mental  
310 competency to stand trial, the reasons therefor, and its opinion as to whether the accused  
311 currently meets the criteria for civil commitment. The court may order an independent  
312 evaluation of the accused by a court appointed licensed clinical psychologist or  
313 psychiatrist, who shall report to the court in writing as to the current mental and  
314 emotional condition of the accused. Based on consideration of all of the evidence  
315 introduced at the bench trial, the court may:

316 (A) If the accused is not a child, refer the case to the probate court of the jurisdiction  
317 of the accused's residence for civil commitment; or

318 (B) Retain jurisdiction of the accused and conduct a bench trial at which the court shall  
319 hear evidence and consider all psychiatric and psychological evaluations submitted to  
320 the court and determine whether the state has proved by clear and convincing evidence  
321 that the accused meets the criteria for civil commitment. The burden of proof in such  
322 bench trials shall be upon the state. Following the bench trial:

323 (i) If the court finds that the accused does not meet the criteria for civil commitment,  
324 the accused shall be released in accordance with the provisions of Chapter 6 of this  
325 title;

326 (ii) If the court finds that the accused meets the criteria for civil commitment, the  
327 judge may issue an order civilly committing the accused to the department for  
328 appropriate secure placement; provided, however, that if the accused is a child, the  
329 department shall be authorized to place such child in a secure facility designated by  
330 the department;

331 (iii) If the accused is civilly committed pursuant to division (ii) of this subparagraph  
332 and was charged with a nonviolent offense, the court may order civil commitment for  
333 a period not to exceed the maximum period for which the accused could have been  
334 sentenced on the most serious nonviolent offense charged, provided that civil  
335 commitment shall be reevaluated by a department physician or licensed psychologist  
336 on an annual basis. On an annual basis, the accused may petition the court for a  
337 determination as to his or her need for continued civil commitment;

338 (iv) If the accused is civilly committed pursuant to division (ii) of this subparagraph  
339 and was charged with a violent offense, the court may order civil commitment for a  
340 period not to exceed the maximum period for which the accused could have been  
341 sentenced on the most serious violent offense charged, provided that civil  
342 commitment shall be reevaluated by a department physician or licensed psychologist  
343 on an annual basis. On an annual basis, the accused may petition the court for a  
344 determination as to his or her need for continued civil commitment;

345 (v) An accused who is civilly committed pursuant to division (ii) of this subparagraph  
346 shall only be released from that civil commitment prior to the expiration of such civil  
347 commitment by order of the court in accordance with the procedures specified in  
348 paragraphs (1) through (3) of subsection (f) of Code Section 17-7-131, except that the  
349 burden of proof in such release hearing shall be on the state, and if the civilly  
350 committed accused is indigent, the accused may petition the court to have an  
351 evaluation performed by a physician or licensed psychologist of the accused's choice,  
352 and the court shall order the cost of such evaluation be paid for by the county; and

353 (vi) Until the expiration of the civil commitment pursuant to division (ii) of this  
354 subparagraph, a department physician or licensed psychologist shall submit his or her  
355 annual evaluation as to whether the civilly committed accused continues to meet the  
356 criteria for civil commitment. The court shall mail the annual evaluation to the  
357 attorney for the accused or, if pro se, to the accused and to the prosecuting attorney.  
358 If the condition of the accused has changed so as to no longer meet the criteria for  
359 civil commitment, then the court shall conduct a bench trial within 45 days of receipt

360 of the evaluation to renew the civil commitment, to change the civil commitment  
 361 either from inpatient to outpatient or from outpatient to inpatient, or in the event  
 362 charges are dismissed, to transfer the jurisdiction of the case to the probate court of  
 363 the jurisdiction of the accused's residence for further civil commitment.

364 (f) Any accused determined by a department physician or licensed psychologist to be  
 365 mentally competent to stand trial and returned to the court as provided in subsection (d) of  
 366 this Code section shall again be entitled to file a special plea as provided for in this Code  
 367 section.

368 (g) If an accused is determined by a department physician or licensed psychologist to be  
 369 mentally incompetent to stand trial, whether or not civilly committed pursuant to this Code  
 370 section, the state may file at any time a motion for rehearing on the issue of the accused's  
 371 mental competency to stand trial. If the state's motion is granted, the case shall proceed as  
 372 provided in this Code section."

### 373 **SECTION 2.**

374 Said title is further amended by adding a new Code section to read as follows:

375 "17-7-132.

376 (a) When information becomes known to the court sufficient to raise a bona fide doubt  
 377 regarding the accused's mental competency to stand trial, the court has a duty, sua sponte,  
 378 to inquire into and determine the accused's mental competency to stand trial. The court  
 379 may order the Department of Behavioral Health and Developmental Disabilities to conduct  
 380 an evaluation of the accused's competency in accordance with the procedures set forth in  
 381 Code Section 17-7-130. The court's order shall set forth those facts which give rise to its  
 382 bona fide doubt as to the accused's mental competency to stand trial. The evaluation of the  
 383 Department of Behavioral Health and Developmental Disabilities shall be submitted to the  
 384 court and to the attorney for the accused or, if pro se, to the accused, but otherwise, the  
 385 report shall remain under seal.

386 (b) If the court orders a competency evaluation and the accused serves notice of a special  
 387 plea of mental incompetency to stand trial or raises the issue of insanity, the court shall  
 388 release the competency evaluation to the prosecuting attorney. Such evaluation shall not  
 389 be released to any other person absent a court order."

### 390 **SECTION 3.**

391 Said title is further amended by revising Code Section 17-17-5.1, relating to victim  
 392 notification from the Department of Behavioral Health and Developmental Disabilities, as  
 393 follows:

394 "17-17-5.1.

395 (a) If the accused is civilly committed to the Department of Behavioral Health and  
396 Developmental Disabilities pursuant to the provisions of Part 2 of Article 6 of Chapter 7  
397 of this title, the department shall, upon the written request of the victim, mail to the victim,  
398 at least ten days before ~~the release or discharge of~~ any trial or hearing involving the  
399 accused, notice of ~~the release or discharge of the accused~~ such trial or hearing.

400 (b) The Department of Behavioral Health and Developmental Disabilities shall mail to the  
401 victim immediately after the escape or subsequent readmission of the accused notice of  
402 such escape or subsequent readmission of the person who is placed by court order in the  
403 custody of the department pursuant to the provisions of Part 2 of Article 6 of Chapter 7 of  
404 this title."

405

#### **SECTION 4.**

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