

Senate Bill 256

By: Senator Davis of the 22nd

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 insanity and mental incompetency in criminal proceedings, so as to
3 provide for consideration of the victim’s impact statement in a commitment hearing
4 proceeding following a plea of insanity or mental incompetency at the time of the crime; to
5 provide for related matters; to provide an effective date; to repeal conflicting laws; and for
6 other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Part 2 of Article 6 of Chapter 7 of Title 17 of the Official Code of Georgia Annotated,
10 relating to insanity and mental incompetency in criminal proceedings, is amended by revising
11 subsection (e) of Code Section 17-7-131, relating to proceedings upon a plea of insanity or
12 mental incompetency at the time of the crime, as follows:

13 "(e)(1) After the expiration of the 30 days' evaluation period in the state mental health
14 facility, if the evaluation report from the Department of Behavioral Health and
15 Developmental Disabilities indicates that the defendant does not meet the inpatient
16 commitment criteria of Chapter 3 of Title 37 or Chapter 4 of Title 37, the trial judge may
17 issue an order discharging the defendant from custody without a hearing.

18 (2) If the defendant is not so discharged, the trial judge shall order a hearing to determine
19 if the defendant meets the inpatient commitment criteria of Chapter 3 of Title 37 or
20 Chapter 4 of Title 37. If such criteria are not met, the defendant must be discharged.

21 (3) The defendant shall be detained in custody until completion of the hearing. The
22 hearing shall be conducted at the earliest opportunity after the expiration of the 30 days'
23 evaluation period but in any event within 30 days after receipt by the prosecuting attorney
24 of the evaluation report from the mental health facility.

25 (4) The court may take judicial notice of evidence introduced during the trial of the
26 defendant and may call for testimony from any person with knowledge concerning

27 whether the defendant is currently a mentally ill person in need of involuntary treatment
 28 or currently mentally retarded and in need of being ordered to receive services, as those
 29 terms are defined by paragraph (12) of Code Section 37-3-1 and Code Section 37-4-40.
 30 The prosecuting attorney may cross-examine the witnesses called by the court and the
 31 defendant's witnesses and present relevant evidence concerning the issues presented at
 32 the hearing. If a victim impact statement was prepared pursuant to Code Section
 33 17-10-1.1 and is available, the prosecuting attorney shall offer such statement into
 34 evidence at the hearing, and it shall be admitted and considered and given such weight,
 35 if any, as the court, within its discretion, shall determine.

36 ~~(4)~~(5) If the judge determines that the defendant meets the inpatient commitment criteria
 37 of Chapter 3 of Title 37 or Chapter 4 of Title 37, the judge shall order the defendant to
 38 be committed to the Department of Behavioral Health and Developmental Disabilities to
 39 receive involuntary treatment under Chapter 3 of Title 37 or to receive services under
 40 Chapter 4 of Title 37. The defendant is entitled to the following rights specified below
 41 and shall be notified in writing of these rights at the time of his admission for evaluation
 42 under subsection (d) of this Code section. Such rights are:

- 43 (A) A notice that a hearing will be held and the time and place thereof;
- 44 (B) A notice that the defendant has the right to counsel and that the defendant or his
 45 representatives may apply immediately to the court to have counsel appointed if the
 46 defendant cannot afford counsel and that the court will appoint counsel for the
 47 defendant unless he indicates in writing that he does not desire to be represented by
 48 counsel;
- 49 (C) The right to confront and cross-examine witnesses and to offer evidence;
- 50 (D) The right to subpoena witnesses and to require testimony before the court in person
 51 or by deposition from any person upon whose evaluation the decision of the court may
 52 rest;
- 53 (E) Notice of the right to have established an individualized service plan specifically
 54 tailored to the person's treatment needs, as such plans are defined in Chapter 3 of Title
 55 37 and Chapter 4 of Title 37; and
- 56 (F) A notice that the defendant has the right to be examined by a physician or a
 57 licensed clinical psychologist of his own choice at his own expense and to have that
 58 physician or psychologist submit a suggested service plan for the patient which
 59 conforms with the requirements of Chapter 3 of Title 37 or Chapter 4 of Title 37,
 60 whichever is applicable.

61 ~~(5)~~(6)(A) If a defendant appears to meet the criteria for outpatient involuntary
 62 treatment as defined in Part 3 of Article 3 of Chapter 3 of Title 37, which shall be the
 63 criteria for release on a trial basis in the community in preparation for a full release, the

64 court may order a period of conditional release subject to certain conditions set by the
65 court. The court is authorized to appoint an appropriate community service provider
66 to work in conjunction with the Department of Behavioral Health and Developmental
67 Disabilities to monitor the defendant's compliance with these conditions and to make
68 regular reports to the court.

69 (B) If the defendant successfully completes all requirements during this period of
70 conditional release, the court shall discharge the individual from commitment at the end
71 of that period. Such individuals may be referred for community mental health, mental
72 retardation, or substance abuse services as appropriate. The court may require the
73 individual to participate in outpatient treatment or any other services or programs
74 authorized by Chapter 3, 4, or 7 of Title 37.

75 (C) If the defendant does not successfully complete any or all requirements of the
76 conditional release period, the court may:

77 (i) Revoke the period of conditional release and return the defendant to a state
78 hospital for inpatient services; or

79 (ii) Impose additional or revise existing conditions on the defendant as appropriate
80 and continue the period of conditional release.

81 (D) For any decision rendered under subparagraph (C) of this paragraph, the defendant
82 may request a review by the court of such decision within 20 days of the order of the
83 court.

84 (E) The Department of Behavioral Health and Developmental Disabilities and any
85 community services providers, including the employees and agents of both, providing
86 supervision or treatment during a period of conditional release shall not be held
87 criminally or civilly liable for any acts committed by a defendant placed by the
88 committing court on a period of conditional release."

89 **SECTION 2.**

90 This Act shall become effective on July 1, 2011.

91 **SECTION 3.**

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