

House Bill 421 (AS PASSED HOUSE AND SENATE)

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

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 or special jury trial for competency proceedings; to clarify procedures for
5 competency evaluations; to provide that an accused determined to be mentally competent to
6 stand trial may be housed by the Department of Behavioral Health and Developmental
7 Disabilities under certain circumstances; to provide for maximum commitment to the
8 Department of Behavioral Health and Developmental Disabilities under certain
9 circumstances; to reorganize the Code relative to competency evaluations and procedures;
10 to provide for a court to request a competency evaluation under certain circumstances; to
11 change provisions relating to demands for speedy trial; to provide for related matters; to
12 repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 SECTION 1.

15 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
16 amended in Part 2 of Article 6 of Chapter 7, relating to insanity and mental incompetency,
17 by adding a new Code section to read as follows:

18 "17-7-129.

19 (a) When information becomes known to the court sufficient to raise a bona fide doubt
20 regarding the accused's mental competency to stand trial, the court has a duty, sua sponte,
21 to inquire into the accused's mental competency to stand trial. The court may order the
22 Department of Behavioral Health and Developmental Disabilities to conduct an evaluation
23 of the accused's competency. If the court determines that it is necessary to have a trial on
24 the issue of competency, the court shall follow the procedures set forth in Code Section
25 17-7-130. The court's order shall set forth those facts which give rise to its bona fide doubt
26 as to the accused's mental competency to stand trial. The evaluation of the Department of

27 Behavioral Health and Developmental Disabilities shall be submitted to the court, and the
 28 court shall submit such evaluation to the attorney for the accused or, if pro se, to the
 29 accused, but otherwise, the report shall remain under seal.

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

34 SECTION 2.

35 Said title is further amended by revising Code Section 17-7-130, relating to the proceedings
 36 upon a plea of mental incompetency to stand trial, as follows:

37 "17-7-130.

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

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

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

43 ~~(2)~~(3) 'Court' ~~'Committing court'~~ means the court which has jurisdiction over the criminal
 44 charges against the ~~defendant~~ accused.

45 ~~(3)~~(4) 'Department' means the Department of Behavioral Health and Developmental
 46 Disabilities.

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

49 ~~(4)~~(6) 'Inpatient' shall have the same meaning as in paragraph (9.1) of Code Section
 50 37-3-1; provided, however, that as applied to a child for purposes of this Code section,
 51 the term shall mean a child who is mentally ill or has a developmental disability and is
 52 in need of involuntary placement.

53 ~~(5)~~(7) 'Nonviolent offense' means any offense other than: a violent offense.

54 ~~(A)(i) Murder;~~

55 ~~(ii) Rape;~~

56 ~~(iii) Aggravated sodomy;~~

57 ~~(iv) Armed robbery;~~

58 ~~(v) Aggravated assault;~~

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

60 ~~(vii) Aggravated battery;~~

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

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

- 63 ~~(x) Aggravated stalking;~~
 64 ~~(xi) Arson in the first degree and in the second degree;~~
 65 ~~(xii) Stalking;~~
 66 ~~(xiii) Fleeing and attempting to elude a police officer;~~
 67 ~~(xiv) Any sexual offense against a minor; or~~
 68 ~~(xv) Any offense which involves the use of a deadly weapon or destructive device;~~
 69 ~~and~~
 70 ~~(B) Those felony offenses deemed by the committing court to involve an allegation of~~
 71 ~~actual or potential physical harm to another person.~~
 72 ~~(6)(8) 'Outpatient' shall have the same meaning as in paragraph (12.1) of Code Section~~
 73 ~~37-3-1, provided that:~~
 74 ~~(A) As applied to a child for purposes of this Code section, the term shall mean a child~~
 75 ~~who is mentally ill or has a developmental disability and is in need of involuntary~~
 76 ~~placement; and~~
 77 ~~(B) The court determines that the defendant accused meets the criteria for release on~~
 78 ~~bail or other pre-trial release pursuant to Code Section 17-6-1.~~
 79 ~~(9) 'Serious violent felony' shall have the same meaning as set forth in Code Section~~
 80 ~~17-10-6.1.~~
 81 ~~(10) 'Sexual offense' shall have the same meaning as set forth in Code Section 17-10-6.2.~~
 82 ~~(11) 'Violent offense' means:~~
 83 ~~(A)(i) A serious violent felony;~~
 84 ~~(ii) A sexual offense;~~
 85 ~~(iii) Criminal attempt to commit a serious violent felony;~~
 86 ~~(iv) Criminal attempt to commit a sexual offense;~~
 87 ~~(v) Aggravated assault;~~
 88 ~~(vi) Hijacking of a motor vehicle or an aircraft;~~
 89 ~~(vii) Aggravated battery;~~
 90 ~~(viii) Aggravated stalking;~~
 91 ~~(ix) Arson in the first degree or in the second degree;~~
 92 ~~(x) Stalking;~~
 93 ~~(xi) Fleeing and attempting to elude a police officer;~~
 94 ~~(xii) Any offense which involves the use of a deadly weapon or destructive device;~~
 95 ~~and~~
 96 ~~(B) Those felony offenses deemed by the court to involve an allegation of actual or~~
 97 ~~potential physical harm to another person.~~
 98 ~~(b) Whenever a plea is filed that a defendant in a criminal case is mentally incompetent~~
 99 ~~to stand trial, it shall be the duty of the court to cause the issue of the defendant's mental~~

100 competency to stand trial to be tried first by a special jury. If the special jury finds the
101 defendant mentally incompetent to stand trial, the court shall retain jurisdiction over the
102 defendant but shall transfer the defendant to the Department of Behavioral Health and
103 Developmental Disabilities and if the defendant is a child, the department shall be
104 authorized to place such defendant in a secure hospital or secure community facility
105 designated by the department; provided, however, that if the defendant is charged with a
106 misdemeanor offense other than as included in subparagraph (a)(5)(A) of this Code section
107 or a nonviolent offense, the court may, in its discretion, retain jurisdiction over the
108 defendant, and may allow evaluation to be done on an outpatient basis by the Department
109 of Behavioral Health and Developmental Disabilities. If the court allows outpatient
110 evaluation and the defendant is in custody, the court may release the defendant in
111 accordance with the provisions of Code Section 17-6-1, et seq.

112 (c) Within 90 days after the Department of Behavioral Health and Developmental
113 Disabilities has received actual custody of a defendant or, in the case of an outpatient, a
114 court order requiring evaluation of a defendant pursuant to subsection (b) of this Code
115 section, the defendant shall be evaluated and a diagnosis made as to whether the defendant
116 is presently mentally incompetent to stand trial and, if so, whether there is a substantial
117 probability that the defendant will attain mental competency to stand trial in the foreseeable
118 future. If the defendant is found to be mentally competent to stand trial, the department
119 shall immediately report that finding and the reasons therefor to the committing court; and
120 the defendant shall be returned to the court as provided for in subsection (f) of this Code
121 section.

122 (d) If the defendant is found to be mentally incompetent to stand trial by the Department
123 of Behavioral Health and Developmental Disabilities and there is not a substantial
124 probability that the person will attain competency in the foreseeable future, the department
125 shall return the physical custody of the defendant to a law enforcement officer of the
126 jurisdiction of the court which committed the defendant unless in the opinion of the
127 department's attending physician, and with concurrence of the court, such detention by law
128 enforcement would be detrimental to the well-being of the defendant, in which case the
129 defendant may be held by the department until the date of the defendant's hearing. The
130 department shall report to the committing court the finding regarding competency, the
131 reasons therefor, and its opinion as to whether the defendant currently meets criteria for
132 commitment as an inpatient or as an outpatient pursuant to Chapter 3 or 4 of Title 37. The
133 law enforcement officer of the jurisdiction of the court which committed the defendant
134 shall retain custody of the defendant and the committing court may order an independent
135 evaluation of the defendant by a court appointed licensed clinical psychologist or
136 psychiatrist, who shall report to the court in writing as to the current mental and emotional

137 ~~condition of the defendant. Based on consideration of all evidence and all reports, the~~
 138 ~~committing court may:~~

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

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

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

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

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

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

167 ~~The Department of Behavioral Health and Developmental Disabilities shall report~~
 168 ~~annually to the committing court on whether the civilly committed defendant continues~~
 169 ~~to meet criteria for involuntary commitment as an inpatient or an outpatient pursuant to~~
 170 ~~Chapter 3 or 4 of Title 37. The committing court shall review the case and enter an~~
 171 ~~appropriate order, either to renew the inpatient or outpatient civil commitment, to change~~
 172 ~~the commitment either from inpatient to outpatient or from outpatient to inpatient, or in~~

173 ~~the event charges are dismissed, transfer the jurisdiction of the case to the probate court~~
174 ~~for further proceedings pursuant to Title 37, if appropriate.~~

175 ~~(e) If the defendant is found to be mentally incompetent to stand trial but there is a~~
176 ~~substantial probability that the person will attain competency in the foreseeable future, by~~
177 ~~the end of the 90 day period, or at any prior time, the department shall report that finding~~
178 ~~and the reasons therefor to the committing court and shall retain custody over the defendant~~
179 ~~for the purpose of continued treatment for an additional period not to exceed nine months;~~
180 ~~provided, however, that if the defendant is charged with a misdemeanor offense or a~~
181 ~~nonviolent offense, the court shall retain jurisdiction over the defendant, but may, in its~~
182 ~~discretion, allow continued treatment to be done on an outpatient basis by the Department~~
183 ~~of Behavioral Health and Developmental Disabilities. The department shall monitor the~~
184 ~~defendant's outpatient treatment for an additional period not to exceed nine months. If, by~~
185 ~~the end of the nine-month period or at any prior time if the defendant's condition warrants,~~
186 ~~the defendant is still found not to be competent to stand trial, irrespective of the probability~~
187 ~~of recovery in the foreseeable future, the department shall report that finding and the~~
188 ~~reasons therefor to the committing court. The committing court shall then follow the~~
189 ~~procedures in subsection (d) of this Code section for further commitment or release.~~

190 ~~(f)(1) If the defendant found to be mentally incompetent to stand trial is at any time~~
191 ~~found by the Department of Behavioral Health and Developmental Disabilities to be~~
192 ~~mentally competent to stand trial, the committing court shall be notified. A defendant~~
193 ~~who is an inpatient and is found by the Department of Behavioral Health and~~
194 ~~Developmental Disabilities to be mentally competent to stand trial shall be discharged~~
195 ~~into the custody of a law enforcement officer of the jurisdiction of the court which~~
196 ~~committed the defendant to the department unless the charges which led to the~~
197 ~~commitment have been dismissed, in which case the defendant shall be discharged. In~~
198 ~~the event a law enforcement officer does not appear and take custody of the defendant~~
199 ~~within 20 days after notice to the appropriate law enforcement official in the jurisdiction~~
200 ~~of the committing court, the presiding judge of the committing court, and the prosecuting~~
201 ~~attorney for the court, the department shall itself return the defendant to one of the~~
202 ~~committing court's detention facilities; and the cost of returning the defendant shall be~~
203 ~~paid by the county in which the committing court is located. All notifications shall be~~
204 ~~sent by certified mail or statutory overnight delivery, return receipt requested. With the~~
205 ~~concurrence of the appropriate court and upon the recommendation of the department's~~
206 ~~attending physician, any defendant discharged as competent to stand trial may be held by~~
207 ~~the department instead of at the court's detention facilities whenever, in the attending~~
208 ~~physician's opinion, such detention in the court's facilities would be detrimental to the~~

209 ~~well-being of the defendant so committed. Such alternative detention shall continue only~~
 210 ~~until the date of the defendant's trial.~~

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

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

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

225 (b)(1) If an accused files a motion requesting a competency evaluation, the court may
 226 order the department to conduct an evaluation by a physician or licensed psychologist to
 227 determine the accused's mental competency to stand trial and, if such physician or
 228 licensed psychologist determines the accused to be mentally incompetent to stand trial,
 229 to make recommendations as to restoring the accused to competency. If the accused is
 230 a child, the department shall be authorized to place such child in a secure facility
 231 designated by the department. The department's evaluation shall be submitted to the
 232 court, and the court shall submit such evaluation to the attorney for the accused or if pro
 233 se, to the accused, but otherwise, the evaluation shall be under seal and shall not be
 234 released to any other person absent a court order.

235 (2) If the accused files a special plea alleging that the accused is mentally incompetent
 236 to stand trial, it shall be the duty of the court to have a bench trial, unless the state or the
 237 accused demands a special jury trial, to determine the accused's competency to stand trial.
 238 Once a special plea has been filed, the court shall submit the department's evaluation to
 239 the prosecuting attorney.

240 (c) If the court finds the accused is mentally incompetent to stand trial, the court may order
 241 a department physician or licensed psychologist to evaluate and diagnose the accused as
 242 to whether there is a substantial probability that the accused will attain mental competency
 243 to stand trial in the foreseeable future. The court shall retain jurisdiction over the accused
 244 and shall transfer the accused to the physical custody of the department. At its discretion,
 245 the court may allow the evaluation to be performed on the accused as an outpatient if the

246 accused is charged with a nonviolent offense. Such evaluation shall be performed within
247 90 days after the department has received actual custody of an accused or, in the case of
248 an outpatient, a court order requiring evaluation of an accused. If the accused is a child,
249 the department shall be authorized to place such child in a secure facility designated by the
250 department. If the evaluation shows:

251 (1) That the accused is mentally competent to stand trial, the department shall
252 immediately report that determination and the reasons therefor to the court, and the court
253 shall submit such determination to the attorney for the accused or, if pro se, to the
254 accused and to the prosecuting attorney. The accused shall be returned to the court as
255 provided for in subsection (d) of this Code section;

256 (2) That the accused is mentally incompetent to stand trial and that there is not a
257 substantial probability that the accused will attain competency in the foreseeable future,
258 the court shall follow the procedures set forth in subsection (e) of this Code section for
259 civil commitment or release; or

260 (3) That the accused is mentally incompetent to stand trial but there is a substantial
261 probability that the accused will attain competency in the foreseeable future, by the end
262 of the 90 day period, or at any prior time, the department shall report that finding and the
263 reasons therefor to the court and shall retain custody over the accused for the purpose of
264 continued treatment for an additional period not to exceed nine months; provided,
265 however, that if the accused is charged with a misdemeanor offense or a nonviolent
266 offense, the court shall retain jurisdiction over the accused but may, in its discretion,
267 allow continued treatment to be done on an outpatient basis by the department. The
268 department shall monitor the accused's outpatient treatment for the additional period not
269 to exceed nine months. If, by the end of the nine-month period or at any prior time the
270 accused's condition warrants, the accused is still determined by the department physician
271 or licensed psychologist to be mentally incompetent to stand trial, irrespective of the
272 probability of recovery in the foreseeable future, the department shall report that finding
273 and the reasons therefor to the court. The court shall then follow the procedures in
274 subsection (e) of this Code section for civil commitment or release.

275 (d)(1) If the department's physician or licensed psychologist determines at any time that
276 the accused is mentally competent to stand trial, the department shall notify the court, and
277 the accused shall be discharged into the custody of a sheriff of the jurisdiction of the court
278 unless the charges which led to the evaluation or civil commitment have been dismissed,
279 in which case, the accused shall be discharged from the department. In the event a sheriff
280 does not appear and take custody of the accused within 20 days after notice to the
281 appropriate sheriff of the jurisdiction of the court, the presiding judge of the court, and
282 the prosecuting attorney for the court, the department shall itself return the accused to one

283 of the court's detention facilities, and the cost of returning the accused shall be paid by
 284 the county in which the court is located. All notifications under this paragraph shall be
 285 sent by certified mail or statutory overnight delivery, return receipt requested. As an
 286 alternative to returning the accused to the sheriff of the jurisdiction of the court, the
 287 department may hold the accused at the department's secure facility instead of at the
 288 court's detention facilities whenever a department physician or licensed psychologist
 289 provides written notice to the court that such detention in the court's facilities would be
 290 detrimental to the well-being of the accused. Such alternative detention shall continue
 291 only until the date of the accused's trial. Regardless of where the accused is held, the
 292 court shall hold a bench trial to determine the accused's mental competency to stand trial
 293 within 45 days of receiving the department's evaluation or, if demanded, shall conduct
 294 a special jury trial within six months of receiving the department's evaluation.

295 (2) If the accused is an outpatient and the department's physician or licensed psychologist
 296 determines at any time that the accused is mentally competent to stand trial, the accused
 297 may remain in the community under conditions of bond or other conditions ordered by
 298 the court, if any, until the date of the accused's trial, which shall be within 45 days of the
 299 court receiving the department's evaluation if tried by the court or within six months of
 300 receiving the department's evaluation if a special jury trial is demanded.

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

304 (1) If the accused is charged with a misdemeanor, the department shall return the
 305 physical custody of the accused to a sheriff of the jurisdiction of the court; provided,
 306 however, that as an alternative to returning the accused to the sheriff of the jurisdiction
 307 of the court, the department may hold the accused at the department's secure facility
 308 instead of at the court's detention facilities whenever a department physician or licensed
 309 psychologist provides written notice to the court that such detention in the court's
 310 facilities would be detrimental to the well-being of the accused. Such alternative
 311 detention shall continue only until the date of the accused's trial. Regardless of where the
 312 accused is held, the court shall, within 45 days of receiving the department's evaluation:

313 (A) Consider entry of a nolle prosequi of the charges pursuant to Code Section 17-8-3
 314 and, if the accused is not a child, request that the department petition the probate court
 315 of the jurisdiction of the accused's residence for civil commitment of the accused; or

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

318 or

319 (2) If the accused is charged with a felony, the department shall return the physical
320 custody of the accused to a sheriff of the jurisdiction of the court; provided, however, that
321 as an alternative to returning the accused to the sheriff of the jurisdiction of the court, the
322 department may hold the accused at the department's secure facility instead of at the
323 court's detention facilities whenever a department physician or licensed psychologist
324 provides written notice to the court that such detention in the court's facilities would be
325 detrimental to the well-being of the accused. Such alternative detention shall continue
326 only until the date of the accused's trial. The department shall report to the court its
327 finding regarding the accused's mental competency to stand trial, the reasons therefor, and
328 its opinion as to whether the accused currently meets the criteria for civil commitment.
329 The court may order an independent evaluation of the accused by a court appointed
330 licensed clinical psychologist or psychiatrist, who shall report to the court in writing as
331 to the current mental and emotional condition of the accused. Regardless of where the
332 accused is held, the court shall, within 45 days of receiving the department's evaluation:
333 (A) Consider entry of a nolle prosequi of the charges pursuant to Code Section 17-8-3
334 and, if the accused is not a child, request that the department petition the probate court
335 of the jurisdiction of the accused's residence for civil commitment of the accused; or
336 (B) Retain jurisdiction of the accused and conduct a trial at which the court shall hear
337 evidence and consider all psychiatric and psychological evaluations submitted to the
338 court and determine whether the state has proved by clear and convincing evidence that
339 the accused meets the criteria for civil commitment. The burden of proof in such trials
340 shall be upon the state. Following the trial:
341 (i) If the court finds that the accused does not meet the criteria for civil commitment,
342 the accused shall be released in accordance with the provisions of Chapter 6 of this
343 title;
344 (ii) If the court finds that the accused meets the criteria for civil commitment, the
345 judge may issue an order civilly committing the accused, and the court shall order the
346 civil commitment to be on an inpatient or outpatient placement; provided, however,
347 that if the accused is a child, the department shall be authorized to place such child
348 in a secure facility designated by the department;
349 (iii) If the accused is civilly committed pursuant to division (ii) of this subparagraph
350 and was charged with a nonviolent offense, the court may order civil commitment on
351 an annual basis, but in no case for a period to exceed the maximum period for which
352 the accused could have been sentenced on the most serious nonviolent offense
353 charged or a period to exceed five years, whichever is less, provided that civil
354 commitment shall be reevaluated by a department physician or licensed psychologist
355 on an annual basis;

356 (iv) If the accused is civilly committed pursuant to division (ii) of this subparagraph
357 and was charged with a violent offense, the court may order civil commitment on an
358 annual basis, but in no case for a period to exceed the maximum period for which the
359 accused could have been sentenced on the most serious violent offense charged,
360 provided that civil commitment shall be reevaluated by a department physician or
361 licensed psychologist on an annual basis;

362 (v) Following the civil commitment pursuant to division (ii) of this subparagraph, a
363 department physician or licensed psychologist shall submit to the court his or her
364 annual evaluation as to whether the civilly committed accused continues to meet the
365 criteria for civil commitment. The court shall mail the annual evaluation to the
366 attorney for the accused or, if pro se, to the accused and to the prosecuting attorney.
367 The court shall review the case annually and enter the appropriate order to renew the
368 civil commitment, to change the civil commitment status, or, in the event the charges
369 are dismissed, to transfer the jurisdiction of the case to the probate court of the
370 jurisdiction of the accused's residence for further civil commitment; provided,
371 however, that after the department submits its annual evaluation, if the state or the
372 accused requests a hearing regarding civil commitment, the court shall hold a hearing
373 on such issue; and

374 (vi) An accused who is civilly committed pursuant to division (ii) of this
375 subparagraph may make an application for release from civil commitment but shall
376 only be released from that civil commitment by order of the court in accordance with
377 the procedures specified in paragraphs (1) through (3) of subsection (f) of Code
378 Section 17-7-131, except that the burden of proof in such release hearing shall be on
379 the state, and if the civilly committed accused is indigent, the accused may petition
380 the court to have an evaluation performed by a physician or licensed psychologist of
381 the accused's choice, and the court may order the cost of such evaluation be paid for
382 by the county.

383 (f) If, at any time, the department's physician or licensed psychologist determines that the
384 accused is mentally incompetent to stand trial but later determines that the accused is
385 mentally competent to stand trial, the court shall be so notified and shall order the accused
386 detained or discharged in accordance with paragraph (1) of subsection (d) of this Code
387 section. Any accused determined by a department physician or licensed psychologist to
388 be mentally competent to stand trial and returned to the court as provided in subsection (d)
389 of this Code section shall again be entitled to file a special plea as provided for in this Code
390 section.

391 (g) If an accused is determined by a department physician or licensed psychologist to be
392 mentally incompetent to stand trial, whether or not civilly committed pursuant to this Code

393 section, the state may file at any time a motion for rehearing on the issue of the accused's
 394 mental competency to stand trial. If the state's motion is granted, the case shall proceed as
 395 provided in this Code section.

396 (h) Nothing in this Code section shall prevent the accused or the state from seeking a court
 397 order for a nondepartment mental competency evaluation of the accused at the cost of the
 398 movant. If a nondepartment mental competency evaluation is ordered, the court shall abide
 399 by the time frames for trial as set forth in this Code section unless the court determines, for
 400 good cause shown, that such time frames require adjustment for a nondepartment
 401 evaluation.

402 (i) The 'Crime Victims' Bill of Rights,' as set forth in Chapter 17 of this title, shall be
 403 applicable to any judicial proceeding held pursuant to this Code section, and notice shall
 404 be provided to any victim as set forth in such chapter."

405 **SECTION 3.**

406 Said title is further amended in Code Section 17-7-170, relating to demands for speedy trials,
 407 by adding a new subsection to read as follows:

408 "(f) If a defendant files a special plea of incompetency to stand trial pursuant to Code
 409 Section 17-7-130 or if the court, pursuant to Code Section 17-7-129, conducts a trial on the
 410 competency of the defendant, the period of time during which such matter is pending shall
 411 not be included in the computation of determining whether a demand for speedy trial has
 412 been satisfied."

413 **SECTION 4.**

414 Said title is further amended in Code Section 17-7-171, relating to the time for demand for
 415 speedy trial in capital cases, by adding a new subsection to read as follows:

416 "(d) If a defendant files a special plea of incompetency to stand trial pursuant to Code
 417 Section 17-7-130 or if the court, pursuant to Code Section 17-7-129, conducts a trial on the
 418 competency of the defendant, the period of time during which such matter is pending shall
 419 not be included in the computation of determining whether a demand for speedy trial has
 420 been satisfied."

421 **SECTION 5.**

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