

Senate Bill 271

By: Senators Burke of the 11th, Kirk of the 13th and Watson of the 1st

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 3 of Title 37 of the Official Code of Georgia Annotated, relating to  
2 examination and treatment for mental illness, so as to provide for reasonable standards for  
3 providing patients and their representatives notice of their rights upon each such patient's  
4 admission to an emergency receiving facility; to provide for procedure for continued  
5 involuntary hospitalization of a mentally ill patient when a discharge has been planned and  
6 is deemed unsafe; to change the time frame for certain notices related to the procedure for  
7 continued involuntary hospitalization; to provide for a reasonable standard for diligent efforts  
8 to secure the names of a mental patient's representatives; to provide for related matters; to  
9 repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

12 Chapter 3 of Title 37 of the Official Code of Georgia Annotated, relating to examination and  
13 treatment for mental illness, is amended by revising Code Section 37-3-44, relating to giving  
14 a patient and his or her representatives notice of their rights upon a patient's admission to an  
15 emergency receiving facility, as follows:

16 "37-3-44.

17 (a) Immediately upon arrival of a patient at an emergency receiving facility under Code  
18 Section 37-3-43 or as soon thereafter as reasonably possible given a patient's condition or  
19 mental state at time of arrival, the facility shall give the patient written notice of his or her  
20 right to petition for a writ of habeas corpus or for a protective order under Code  
21 Section 37-3-148. This written notice shall also inform the patient that he or she has a right  
22 to legal counsel and that, if the patient is unable to afford counsel, the court will appoint  
23 counsel.

24 (b) The notice informing the patient's representatives of the patient's hospitalization in an  
25 emergency receiving facility shall include a clear notification that the representatives may  
26 petition for a writ of habeas corpus or for a protective order under Code Section 37-3-148."

27 **SECTION 2.**

28 Said chapter is further amended by revising Code Section 37-3-83, relating to procedure for  
29 continued involuntary hospitalization, as follows:

30 "37-3-83.

31 (a) If it is necessary to continue involuntary treatment of a hospitalized patient beyond the  
32 end of the period during which the treatment facility is currently authorized under this  
33 chapter to retain the patient, the chief medical officer prior to the expiration of the period  
34 shall seek an order authorizing such continued treatment in the manner provided in this  
35 Code section. The chief medical officer may seek such an order authorizing continued  
36 involuntary treatment involving inpatient treatment, outpatient treatment, or both under the  
37 procedures of this Code section and Code Section 37-3-93.

38 (b) If the chief medical officer finds that continued involuntary treatment is necessary ~~(1)~~  
39 for an individual who was admitted while serving a criminal sentence but whose sentence  
40 is about to expire or ~~(2)~~ for an individual who was hospitalized while under the jurisdiction  
41 of a juvenile court but who is about to reach the age of 17, the chief medical officer shall  
42 seek an order authorizing such continued treatment in the manner provided in this Code  
43 section; and this chapter shall apply fully to such a patient after that time.

44 (c) A Committee for Continued Involuntary Treatment Review shall be established by the  
45 chief medical officer of each hospital and shall consist of not less than five persons of  
46 professional status, at least one of whom shall be a physician and at least two others of  
47 whom shall be either physicians or psychologists. The committee may conduct its meetings  
48 with a quorum of any three members, at least one of whom shall be a physician. The  
49 function of this committee shall be to review and evaluate the updated individualized  
50 service plan of each patient of the hospital and to report to the chief medical officer its  
51 recommendations concerning the patient's need for continued involuntary treatment. No  
52 person who has responsibility for the care and treatment of the ~~individual~~ patient for whom  
53 continued involuntary treatment is requested shall serve on any committee which reviews  
54 such ~~individual's~~ patient's case.

55 (d) If the chief medical officer desires to seek an order under this Code section authorizing  
56 continued involuntary treatment for up to 12 months beyond the expiration of the currently  
57 authorized period of hospitalization, he or she shall first file a notice of such intended  
58 action with the Committee for Continued Involuntary Treatment Review, which notice  
59 shall be forwarded to the committee at least ~~60~~ 40 days prior to the expiration of that  
60 period.

61 (e) If, within 40 days of the expiration of an order for involuntary treatment relating to a  
62 patient for whom discharge has been planned, the chief medical officer determines  
63 discharge would now be unsafe, the chief medical officer may execute a certificate to be

64 filed with a petition for continued involuntary treatment pursuant to this chapter. The  
65 certificate shall indicate the basis for the determination that the patient is a mentally ill  
66 person requiring involuntary treatment as defined in paragraph (12) of Code  
67 Section 37-3-1, the reason the process for obtaining an order for continued hospitalization  
68 was not commenced 40 days or more prior to the expiration date, and the reason continued  
69 hospitalization is the least restrictive alternative available. Referral to the Committee for  
70 Continued Involuntary Treatment Review is not required prior to the filing of a certificate  
71 and petition under this subsection. Under this subsection, the chief medical officer shall  
72 serve the petition for an order authorizing continued involuntary treatment along with  
73 copies of the updated individualized service plan on the Office of State Administrative  
74 Hearings and shall also serve such petition along with a copy of the updated individualized  
75 service plan on the patient. A copy of the petition shall be served on the patient's  
76 representatives. The petition shall contain a plain and simple statement that the patient or  
77 his or her representatives may file a request for a hearing with a hearing examiner  
78 appointed pursuant to Code Section 37-3-84 within ten days after service of the petition,  
79 that the patient has a right to counsel at the hearing, that the patient or his or her  
80 representatives may apply immediately to the court to have counsel appointed if the patient  
81 cannot afford counsel, and that the court will appoint counsel for the patient unless the  
82 patient indicates in writing that he or she does not desire to be represented by counsel or  
83 has made his or her own arrangements for counsel. If, following the filing of the certificate  
84 and petition under this subsection, the order authorizing the treatment facility to retain the  
85 patient expires, such facility shall be authorized to retain the patient for continued  
86 involuntary treatment until a ruling is issued. If at any time the chief medical officer  
87 determines that the patient, after consideration of the recommendations of the treatment  
88 team, is no longer a mentally ill person requiring involuntary inpatient treatment, the  
89 patient shall be immediately discharged from involuntary hospitalization pursuant to  
90 subsection (b) of Code Section 37-3-85.

91 ~~(e)~~(f) Within ~~ten~~ five days of the date of the notice, the committee shall meet to consider  
92 the matter of the chief medical officer's intention to seek an order for continued involuntary  
93 treatment. Prior to the committee's meeting, the patient and his or her representatives shall  
94 be notified of the following: the purpose of such meeting, the time and place of such  
95 meeting, their right to be present at such meeting, and their right to present any alternative  
96 individualized service plan secured at their expense. In those cases in which the patient will  
97 not or cannot appear, at least one member of the committee will make all reasonable efforts  
98 to interview the patient and report to the committee. The physician or psychologist  
99 proposing the treatment plan shall present an updated individualized service plan for the  
100 patient to the committee. The committee shall report to the chief medical officer or his or

101 her designee, other than the physician or psychologist proposing the treatment plan or a  
 102 member of the committee, its written recommendations along with any minority  
 103 recommendations which may also be submitted. Such report will specify whether or not  
 104 the patient is a mentally ill person requiring involuntary treatment and whether continued  
 105 hospitalization is the least restrictive alternative available.

106 ~~(f)~~(g) If, after considering the committee's recommendations and minority  
 107 recommendations, if any, the chief medical officer or his or her designee, other than the  
 108 attending physician or a member of the committee, determines that the patient is not a  
 109 mentally ill person requiring involuntary treatment, the patient shall be immediately  
 110 discharged from involuntary hospitalization pursuant to subsection (b) of Code  
 111 Section 37-3-85.

112 ~~(g)~~(h) If, after considering the committee's recommendations and minority  
 113 recommendations, if any, the chief medical officer or his or her designee, other than the  
 114 attending physician or member of the committee, determines that the patient is a mentally  
 115 ill person requiring involuntary treatment, he or she shall, within ~~ten~~ five days after  
 116 receiving the committee's recommendations, serve a petition for an order authorizing  
 117 continued involuntary treatment along with copies of the updated individualized service  
 118 plan and the committee's report on the ~~designated office within the department~~ Office of  
 119 State Administrative Hearings and shall also serve such petition along with a copy of the  
 120 updated individualized service plan on the patient. A copy of the petition shall be served  
 121 on the patient's representatives. The petition shall contain a plain and simple statement that  
 122 the patient or his or her representatives may file a request for a hearing with a hearing  
 123 examiner appointed pursuant to Code Section 37-3-84 within ~~15~~ ten days after service of  
 124 the petition, that the patient has a right to counsel at the hearing, that the patient or his or  
 125 her representatives may apply immediately to the court to have counsel appointed if the  
 126 patient cannot afford counsel, and that the court will appoint counsel for the patient unless  
 127 the patient indicates in writing that he or she does not desire to be represented by counsel  
 128 or has made his or her own arrangements for counsel.

129 ~~(h)~~(i) If a hearing is not requested by the patient or ~~the~~ his or her representatives within ~~15~~  
 130 ten days of service of the petition on the patient and his or her representatives, the hearing  
 131 examiner shall make an independent review of the committee's report, the updated  
 132 individualized service plan, and the petition. If he or she concludes that continued  
 133 involuntary treatment may not be necessary or if he or she finds any member of the  
 134 committee so concluded, then he or she shall order that a hearing be held pursuant to  
 135 subsection (i) of this Code section. If he or she concludes that continued involuntary  
 136 treatment is necessary, then he or she shall order continued involuntary treatment involving  
 137 inpatient treatment, outpatient treatment, or both for a period not to exceed one year.

138 ~~(i)~~(j) If a hearing is requested within ~~15~~ ten days of service of the petition on the patient  
 139 and his or her representatives or if the hearing examiner orders a hearing pursuant to  
 140 subsection ~~(i)~~(j) or ~~(j)~~(k) of this Code section, the hearing examiner shall set a time and  
 141 place for the hearing to be held within 25 days of the time the hearing examiner receives  
 142 the request but ~~in any event~~ no later than the day on which the current order of involuntary  
 143 inpatient treatment expires, unless such hearing occurs after the expiration of the order  
 144 pursuant to subsection (e) of this Code section. Notice of the hearing shall be served on the  
 145 patient, his or her representatives, the treatment facility, and, when appropriate, ~~on the~~  
 146 counsel for the patient. The hearing examiner, within his or her discretion, may grant a  
 147 change of venue for the convenience of parties or witnesses. Such hearing shall be a full  
 148 and fair hearing, except that the patient's attorney, when the patient is unable to attend the  
 149 hearing and is incapable of consenting to a waiver of his or her appearance, may move that  
 150 the patient not be required to appear; however, the record shall reflect the reasons for the  
 151 hearing examiner's actions. After such hearing, the hearing examiner may issue any order  
 152 which the court is authorized to issue under Code Section 37-3-81.1 and subject to the  
 153 limitations of ~~that~~ Code Section 37-3-81.1, provided that a patient ~~who~~ is an outpatient who  
 154 does not meet the requirements for discharge under paragraph (2) of subsection (a) of Code  
 155 Section 37-3-81.1 shall nevertheless be discharged; and provided, further, that the hearing  
 156 examiner may order the patient's continued inpatient treatment, outpatient treatment, or  
 157 both for a period not to exceed one year, subject to the power to discharge the patient under  
 158 subsection (b) of Code Section 37-3-85 or under Code Section 37-3-94. In the event that  
 159 an order approving continued hospitalization is entered for an individual who was admitted  
 160 while serving a criminal sentence under the jurisdiction of the Department of Corrections,  
 161 but whose sentence is about to expire, the chief medical officer shall serve a copy of that  
 162 order upon the Department of Corrections within five working days of the issuance of the  
 163 order.

164 ~~(j)~~(k) The hearing examiner for a patient who was admitted under the jurisdiction of the  
 165 juvenile court and who reaches the age of 17 without having had a full and fair hearing  
 166 pursuant to any provisions of this chapter or without having waived such hearing shall  
 167 order that a hearing be held pursuant to subsection ~~(i)~~(j) of this Code section."

### 168 SECTION 3.

169 Said chapter is further amended by revising subsection (a) of Code Section 37-3-147, relating  
 170 to patient representatives and guardians ad litem, notification provisions, and duration and  
 171 scope of guardianship ad litem, as follows:

172 "(a) At the time a patient is admitted to any facility under this chapter or as soon thereafter  
 173 as reasonably possible given the patient's condition or mental state at time of admission,

174 that facility shall use diligent efforts to secure the names and addresses of at least two  
175 representatives, which names and addresses shall be entered in the patient's clinical record."

176 **SECTION 4.**

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