

Senate Bill 271

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

AS PASSED SENATE

**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 persons with mental illness and their representatives notice of their rights upon
4 each such person's admission to an emergency receiving facility; to provide for procedure
5 for continued involuntary hospitalization of a person who has mental illness when a
6 discharge has been planned and is deemed unsafe; to change the time frame for certain
7 notices related to the procedure for continued involuntary hospitalization; to provide for a
8 reasonable standard for diligent efforts to secure the names of a person's representatives; to
9 provide for related matters; to repeal conflicting laws; and for other purposes.

10 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

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

24 (b) The notice informing the patient's person's representatives of ~~the patient's~~ such person's
25 hospitalization in an emergency receiving facility shall include a clear notification that the

26 representatives may petition for a writ of habeas corpus or for a protective order under
 27 Code Section 37-3-148."

28 **SECTION 2.**

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

31 "37-3-83.

32 (a) If it is necessary to continue involuntary treatment of a hospitalized patient person who
 33 has mental illness beyond the end of the period during which the treatment facility is
 34 currently authorized under this chapter to retain ~~the patient~~ such person, the chief medical
 35 officer prior to the expiration of the period shall seek an order authorizing such continued
 36 treatment in the manner provided in this Code section. The chief medical officer may seek
 37 such an order authorizing continued involuntary treatment involving inpatient treatment,
 38 outpatient treatment, or both under the procedures of this Code section and Code Section
 39 37-3-93.

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

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

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

61 shall be forwarded to the committee at least ~~60~~ 40 days prior to the expiration of that
62 period.

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

95 (e)(f) Within ten ~~five~~ days of the date of the notice, the committee shall meet to consider
96 the matter of the chief medical officer's intention to seek an order for continued involuntary
97 treatment. Prior to the committee's meeting, the ~~patient~~ person who has mental illness and

98 his or her representatives shall be notified of the following: the purpose of such meeting,
 99 the time and place of such meeting, their right to be present at such meeting, and their right
 100 to present any alternative individualized service plan secured at their expense. In those
 101 cases in which the patient person will not or cannot appear, at least one member of the
 102 committee will make all reasonable efforts to interview the patient person who has mental
 103 illness and report to the committee. The physician or psychologist proposing the treatment
 104 plan shall present an updated individualized service plan for the patient person to the
 105 committee. The committee shall report to the chief medical officer or his or her designee,
 106 other than the physician or psychologist proposing the treatment plan or a member of the
 107 committee, its written recommendations along with any minority recommendations which
 108 may also be submitted. Such report ~~will~~ shall specify whether or not the ~~patient is a~~
 109 ~~mentally ill~~ person has a mental illness requiring involuntary treatment and whether
 110 continued hospitalization is the least restrictive alternative available.

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

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

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

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

172 ~~(j)~~(k) The hearing examiner for a patient person who has mental illness who was admitted
173 under the jurisdiction of the juvenile court and who reaches the age of 17 without having
174 had a full and fair hearing pursuant to any provisions of this chapter or without having
175 waived such hearing shall order that a hearing be held pursuant to subsection ~~(i)~~(j) of this
176 Code section."

177 **SECTION 3.**

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

181 "(a) At the time a patient person who has mental illness is admitted to any facility under
182 this chapter or as soon thereafter as reasonably possible given the person's condition or
183 mental state at the time of admission, that facility shall use diligent efforts to secure the
184 names and addresses of at least two representatives, which names and addresses shall be
185 entered in the patient's person's clinical record."

186 **SECTION 4.**

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