

Senate Bill 304

By: Senators Parent of the 42nd and Jones II of the 22nd

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Code Section 35-3-34 of the Official Code of Georgia Annotated, relating to
2 disclosure and dissemination of criminal records to private persons and businesses, resulting
3 responsibility and liability of issuing center, and provision of certain information to the FBI
4 in conjunction with the National Instant Criminal Background Check System, so as to allow
5 for the preservation of a person's involuntary hospitalization information received by the
6 Georgia Crime Information Center; to provide for exceptions; to provide for a judicial
7 procedure for purging a person's involuntary hospitalization information received by the
8 Georgia Crime Information Center; to provide for related matters; to repeal conflicting laws;
9 and for other purposes.

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

11 **SECTION 1.**

12 Code Section 35-3-34 of the Official Code of Georgia Annotated, relating to disclosure and
13 dissemination of criminal records to private persons and businesses, resulting responsibility
14 and liability of issuing center, and provision of certain information to the FBI in conjunction
15 with the National Instant Criminal Background Check System, is amended by revising
16 paragraph (2) of subsection (e) as follows:

17 "(2)(A) The records of the Georgia Crime Information Center shall include information
18 as to whether a person has been involuntarily hospitalized. Notwithstanding any other
19 provisions of law and in order to carry out the provisions of this Code section and Code
20 Section 16-11-172, the Georgia Crime Information Center shall be provided such
21 information and no other mental health information from the involuntary hospitalization
22 records of the probate courts concerning persons involuntarily hospitalized after
23 March 22, 1995, in a manner agreed upon by the Probate Judges Training Council and
24 the Georgia Bureau of Investigation to preserve the confidentiality of patients' rights
25 in all other respects. Further, notwithstanding any other provisions of law and in order
26 to carry out the provisions of this Code section and Code Section 16-11-172, the center

27 shall be provided information as to whether a person has been adjudicated mentally
 28 incompetent to stand trial or not guilty by reason of insanity at the time of the crime,
 29 has been involuntarily hospitalized, or both from the records of the clerks of the
 30 superior courts concerning persons involuntarily hospitalized after March 22, 1995, in
 31 a manner agreed upon by The Council of Superior Court Clerks of Georgia and the
 32 Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all
 33 other respects. ~~After five years have elapsed from the date that a person's involuntary~~
 34 ~~hospitalization information has been received by the Georgia Crime Information~~
 35 ~~Center, the center shall purge its records of such information as soon as practicable and~~
 36 ~~in any event purge such records within 30 days after the expiration of such five-year~~
 37 ~~period~~ Pursuant to this Code section, such person may petition the court in which such
 38 hospitalization proceedings occurred for relief. A copy of such petition for relief shall
 39 be served as notice upon the opposing civil party or the prosecuting attorney for the
 40 state, as the case may be, or their successors, who appeared in the underlying case.
 41 Within 30 days of the receipt of such petition for relief, such court shall hold a hearing
 42 on such petition for relief. Such prosecuting attorney for the state may represent the
 43 interests of the state at such hearing.

44 (B) At the hearing provided for under subparagraph (A) of this paragraph, the court
 45 shall receive and consider evidence in a closed proceeding concerning:

- 46 (i) The circumstances which caused the person to be subject to such hospitalization;
 47 (ii) The person's mental health and criminal history records, if any. The judge of
 48 such court may require any such person to sign a waiver authorizing the
 49 superintendent of any mental hospital or treatment center to make to the judge a
 50 recommendation regarding whether such person is a threat to the safety of himself or
 51 herself or others;
 52 (iii) The person's reputation, which shall be established through character witness
 53 statements, testimony, or other character evidence; and
 54 (iv) Changes in the person's condition or circumstances since such hospitalization.

55 (C)(i) The judge shall issue an order of his or her decision on the petition for relief
 56 provided for under subparagraph (A) of this paragraph no later than 30 days after the
 57 hearing.

58 (ii) The court shall grant the petition for relief if such court finds by a preponderance
 59 of the evidence that the person will not likely act in a manner dangerous to himself
 60 or herself or public safety and that granting the relief will not be contrary to the public
 61 interest. A record shall be kept of the hearing; provided, however, that such record
 62 shall remain confidential and be disclosed only to a court or to the parties in the event

63 of an appeal. Any appeal of the court's ruling on the petition for relief shall be de
64 novo review.

65 (iii) If the court grants such person's petition for relief, the clerk of such court shall
66 report such order to the Georgia Crime Information Center immediately, but in no
67 case later than ten business days after the date of such order, and the center shall
68 purge such record that is the subject of the order as soon as practicable but not later
69 than 30 days after receipt of such order.

70 (D) A person may petition for relief under this paragraph not more than once every two
71 years. In the case of a person who has been hospitalized, such person shall not petition
72 for relief prior to being discharged from such hospitalization and may first petition for
73 relief only after 12 months from the date on which his or her involuntary hospitalization
74 commenced."

75 **SECTION 2.**

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