

The House Committee on Judiciary Non-Civil offers the following substitute to HB 343:

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2 so as to replace certain outdated terminology, as it relates to the use of "mental retardation"
3 and "mentally retarded"; to provide that such updated terminology shall not affect case law
4 decided prior to this change; to provide for legislative findings; to provide for related matters;
5 to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 The General Assembly finds that for the purposes of existing case law when a case refers to
9 or uses the term "mental retardation," "mentally retarded," or "intellectual disability," such
10 terms shall have the same meaning and shall be interchangeable.

11 **SECTION 2.**

12 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
13 amended by revising Code Section 17-2-4, relating to defendant arrested, held, or present in
14 county other than that in which indictment or accusation is pending, as follows:

15 "17-2-4.

16 (a) A defendant arrested, held, or present in a county other than that in which an
17 indictment or accusation is pending against that defendant may state in writing a wish to
18 plead guilty, guilty but mentally ill, guilty but ~~mentally retarded~~ with intellectual disability,
19 or nolo contendere; to waive trial in the county in which the indictment or accusation is
20 pending; and to consent to disposition of the case in the county in which the defendant was
21 arrested, held, or present, subject to the approval of the prosecuting attorney for each
22 county. Upon receipt of the defendant's statement and the written approval of the
23 prosecuting attorney for each county, the clerk of the court in which the indictment or
24 accusation is pending shall transmit the papers in the proceeding or certified copies thereof

25 to the clerk of the court for the county in which the defendant was arrested, held, or
 26 present, and the prosecution shall continue in that county.

27 (b) A defendant arrested, held, or present in a county other than the county in which a
 28 complaint or arrest warrant is pending against that defendant may state in writing a wish
 29 to plead guilty, guilty but mentally ill, guilty but ~~mentally retarded~~ with intellectual
 30 disability, or nolo contendere; to waive venue and trial in the county in which the
 31 complaint or warrant was issued; and to consent to disposition of the case in the county in
 32 which the defendant was arrested, held, or present, subject to the approval of the
 33 prosecuting attorney for each county. Upon receipt of the defendant's statement and the
 34 written approval of the prosecuting attorney for each county, the clerk of the court in which
 35 the complaint or arrest warrant is pending shall transmit the papers in the proceeding or
 36 certified copies thereof to the clerk of the court for the county in which the defendant was
 37 arrested, held, or present, and the prosecution shall continue in that county.

38 (c) If after the proceeding has been transferred pursuant to subsection (a) or (b) of this
 39 Code section the defendant pleads not guilty or not guilty by reason of insanity, the clerk
 40 shall return the papers to the court in which the prosecution was commenced and the
 41 proceeding shall be restored to the docket of that court. A defendant's statement that the
 42 defendant wishes to plead guilty, guilty but mentally ill, guilty but ~~mentally retarded~~ with
 43 intellectual disability, or nolo contendere shall not be used against the defendant."

44 **SECTION 3.**

45 Said title is further amended by revising Code Section 17-7-131, relating to proceedings upon
 46 pleas of insanity or mental incompetency at time of crime, as follows:

47 "17-7-131.

48 (a) For purposes of this Code section, the term:

49 (1) 'Insane at the time of the crime' means meeting the criteria of Code Section 16-3-2
 50 or 16-3-3. However, the term shall not include a mental state manifested only by
 51 repeated unlawful or antisocial conduct.

52 (2) 'Intellectual disability' means having significantly subaverage general intellectual
 53 functioning resulting in or associated with impairments in adaptive behavior which
 54 manifested during the developmental period.

55 ~~(2)~~(3) 'Mentally ill' means having a disorder of thought or mood which significantly
 56 impairs judgment, behavior, capacity to recognize reality, or ability to cope with the
 57 ordinary demands of life. However, the term 'mental illness' shall not include a mental
 58 state manifested only by repeated unlawful or antisocial conduct.

59 ~~(3) 'Mentally retarded' means having significantly subaverage general intellectual~~
 60 ~~functioning resulting in or associated with impairments in adaptive behavior which~~
 61 ~~manifested during the developmental period.~~

62 (b)(1) In all cases in which the defense of insanity is interposed, the jury, or the court if
 63 tried by it, shall find whether the defendant is:

64 (A) Guilty;

65 (B) Not guilty;

66 (C) Not guilty by reason of insanity at the time of the crime;

67 (D) Guilty but mentally ill at the time of the crime, but the finding of guilty but
 68 mentally ill shall be made only in felony cases; or

69 (E) Guilty but ~~mentally retarded~~ with intellectual disability, but the finding of ~~mental~~
 70 ~~retardation~~ intellectual disability shall be made only in felony cases.

71 (2) A plea of guilty but mentally ill at the time of the crime or a plea of guilty but
 72 ~~mentally retarded~~ with intellectual disability shall not be accepted until the defendant has
 73 undergone examination by a licensed psychologist or psychiatrist and the court has
 74 examined the psychological or psychiatric reports, held a hearing on the issue of the
 75 defendant's mental condition, and is satisfied that there is a factual basis that the
 76 defendant was mentally ill at the time of the offense or ~~mentally retarded~~ has intellectual
 77 disability to which the plea is entered.

78 (2.1) A plea of not guilty by reason of insanity at the time of the crime shall not be
 79 accepted and the defendant adjudicated not guilty by reason of insanity by the court
 80 without a jury until the defendant has undergone examination by a licensed psychologist
 81 or psychiatrist and the court has examined the psychological or psychiatric reports, has
 82 held a hearing on the issue of the defendant's mental condition, and the court is satisfied
 83 that the defendant was insane at the time of the crime according to the criteria of Code
 84 Section 16-3-2 or 16-3-3.

85 (3) In all cases in which the defense of insanity is interposed, the trial judge shall charge
 86 the jury, in addition to other appropriate charges, the following:

87 (A) I charge you that should you find the defendant not guilty by reason of insanity at
 88 the time of the crime, the defendant will be committed to a state mental health facility
 89 until such time, if ever, that the court is satisfied that he or she should be released
 90 pursuant to law.

91 (B) I charge you that should you find the defendant guilty but mentally ill at the time
 92 of the crime, the defendant will be placed in the custody of the Department of
 93 Corrections which will have responsibility for the evaluation and treatment of the
 94 mental health needs of the defendant, which may include, at the discretion of the

95 Department of Corrections, referral for temporary hospitalization at a facility operated
96 by the Department of Behavioral Health and Developmental Disabilities.

97 (C) I charge you that should you find the defendant guilty but ~~mentally retarded~~ with
98 intellectual disability, the defendant will be placed in the custody of the Department of
99 Corrections, which will have responsibility for the evaluation and treatment of the
100 mental health needs of the defendant, which may include, at the discretion of the
101 Department of Corrections, referral for temporary hospitalization at a facility operated
102 by the Department of Behavioral Health and Developmental Disabilities.

103 (c) In all criminal trials in any of the courts of this state wherein an accused shall contend
104 that he or she was insane or otherwise mentally incompetent under the law at the time the
105 act or acts charged against him or her were committed, the trial judge shall instruct the jury
106 that they may consider, in addition to verdicts of 'guilty' and 'not guilty,' the additional
107 verdicts of 'not guilty by reason of insanity at the time of the crime,' 'guilty but mentally
108 ill at the time of the crime,' and 'guilty but ~~mentally retarded~~ with intellectual disability.'

109 (1) The defendant may be found 'not guilty by reason of insanity at the time of the crime'
110 if he or she meets the criteria of Code Section 16-3-2 or 16-3-3 at the time of the
111 commission of the crime. If the court or jury should make such finding, it shall so
112 specify in its verdict.

113 (2) The defendant may be found 'guilty but mentally ill at the time of the crime' if the
114 jury, or court acting as trier of facts, finds beyond a reasonable doubt that the defendant
115 is guilty of the crime charged and was mentally ill at the time of the commission of the
116 crime. If the court or jury should make such finding, it shall so specify in its verdict.

117 (3) The defendant may be found 'guilty but ~~mentally retarded~~ with intellectual disability'
118 if the jury, or court acting as trier of facts, finds beyond a reasonable doubt that the
119 defendant is guilty of the crime charged and is ~~mentally retarded~~ with intellectual
120 disability. If the court or jury should make such finding, it shall so specify in its verdict.

121 (d) Whenever a defendant is found not guilty by reason of insanity at the time of the crime,
122 the court shall retain jurisdiction over the person so acquitted and shall order such person
123 to be detained in a state mental health facility, to be selected by the Department of
124 Behavioral Health and Developmental Disabilities, for a period not to exceed 30 days from
125 the date of the acquittal order, for evaluation of the defendant's present mental condition.
126 Upon completion of the evaluation, the proper officials of the mental health facility shall
127 send a report of the defendant's present mental condition to the trial judge, the prosecuting
128 attorney, and the defendant's attorney, if any.

129 (e)(1) After the expiration of the 30 days' evaluation period in the state mental health
130 facility, if the evaluation report from the Department of Behavioral Health and
131 Developmental Disabilities indicates that the defendant does not meet the inpatient

132 commitment criteria of Chapter 3 of Title 37 or Chapter 4 of Title 37, the trial judge may
133 issue an order discharging the defendant from custody without a hearing.

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

137 (3) The defendant shall be detained in custody until completion of the hearing. The
138 hearing shall be conducted at the earliest opportunity after the expiration of the 30 days'
139 evaluation period but in any event within 30 days after receipt by the prosecuting attorney
140 of the evaluation report from the mental health facility. The court may take judicial
141 notice of evidence introduced during the trial of the defendant and may call for testimony
142 from any person with knowledge concerning whether the defendant is currently a
143 mentally ill person in need of involuntary treatment, as defined by paragraph (12) of
144 Code Section 37-3-1, or a person with a developmental disability, as defined in paragraph
145 (8) of Code Section 37-1-1, who presents a substantial risk of imminent harm to himself
146 or herself or others. The prosecuting attorney may cross-examine the witnesses called
147 by the court and the defendant's witnesses and present relevant evidence concerning the
148 issues presented at the hearing.

149 (4) If the judge determines that the defendant meets the inpatient commitment criteria
150 of Chapter 3 of Title 37 or Chapter 4 of Title 37, the judge shall order the defendant to
151 be committed to the Department of Behavioral Health and Developmental Disabilities to
152 receive involuntary treatment under Chapter 3 of Title 37 or to receive services under
153 Chapter 4 of Title 37. The defendant is entitled to the following rights specified below
154 and shall be notified in writing of these rights at the time of his or her admission for
155 evaluation under subsection (d) of this Code section. Such rights are:

156 (A) A notice that a hearing will be held and the time and place thereof;

157 (B) A notice that the defendant has the right to counsel and that the defendant or his
158 or her representatives may apply immediately to the court to have counsel appointed
159 if the defendant cannot afford counsel and that the court will appoint counsel for the
160 defendant unless he or she indicates in writing that he or she does not desire to be
161 represented by counsel;

162 (C) The right to confront and cross-examine witnesses and to offer evidence;

163 (D) The right to subpoena witnesses and to require testimony before the court in person
164 or by deposition from any person upon whose evaluation the decision of the court may
165 rest;

166 (E) Notice of the right to have established an individualized service plan specifically
167 tailored to the person's treatment needs, as such plans are defined in Chapter 3 of Title
168 37 and Chapter 4 of Title 37; and

169 (F) A notice that the defendant has the right to be examined by a physician or a
 170 licensed clinical psychologist of his or her own choice at his or her own expense and
 171 to have that physician or psychologist submit a suggested service plan for the patient
 172 which conforms with the requirements of Chapter 3 of Title 37 or Chapter 4 of Title 37,
 173 whichever is applicable.

174 (5)(A) If a defendant appears to meet the criteria for outpatient involuntary treatment
 175 as defined in Part 3 of Article 3 of Chapter 3 of Title 37, which shall be the criteria for
 176 release on a trial basis in the community in preparation for a full release, the court may
 177 order a period of conditional release subject to certain conditions set by the court. The
 178 court is authorized to appoint an appropriate community service provider to work in
 179 conjunction with the Department of Behavioral Health and Developmental Disabilities
 180 to monitor the defendant's compliance with these conditions and to make regular reports
 181 to the court.

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

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

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

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

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

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

202 (f) A defendant who has been found not guilty by reason of insanity at the time of the
 203 crime and is ordered committed to the Department of Behavioral Health and
 204 Developmental Disabilities under subsection (e) of this Code section may only be

205 discharged from that commitment by order of the committing court in accordance with the
206 procedures specified in this subsection:

207 (1) Application for the release of a defendant who has been committed to the Department
208 of Behavioral Health and Developmental Disabilities under subsection (e) of this Code
209 section upon the ground that he or she does not meet the civil commitment criteria under
210 Chapter 3 of Title 37 or Chapter 4 of Title 37 may be made to the committing court,
211 either by such defendant or by the superintendent of the state hospital in which the said
212 defendant is detained;

213 (2) The burden of proof in such release hearing shall be upon the applicant. The
214 defendant shall have the same rights in the release hearing as set forth in subsection (e)
215 of this Code section; and

216 (3) If the finding of the court is adverse to release in such hearing held pursuant to this
217 subsection on the grounds that such defendant does meet the inpatient civil commitment
218 criteria, a further release application by the defendant shall not be heard by the court until
219 12 months have elapsed from the date of the hearing upon the last preceding application.
220 The Department of Behavioral Health and Developmental Disabilities shall have the
221 independent right to request a release hearing once every 12 months.

222 (g)(1) Whenever a defendant is found guilty but mentally ill at the time of a felony or
223 guilty but ~~mentally retarded~~ has intellectual disability, or enters a plea to that effect that
224 is accepted by the court, the court shall sentence him or her in the same manner as a
225 defendant found guilty of the offense, except as otherwise provided in subsection (j) of
226 this Code section. A defendant who is found guilty but mentally ill at the time of the
227 felony or guilty but ~~mentally retarded~~ has intellectual disability shall be committed to an
228 appropriate penal facility and shall be evaluated then treated, if indicated, within the
229 limits of state funds appropriated therefor, in such manner as is psychiatrically indicated
230 for his or her mental illness or ~~mental retardation~~ intellectual disability.

231 (2) If at any time following the defendant's conviction as a guilty but mentally ill or
232 guilty but ~~mentally retarded~~ with intellectual disability offender it is determined that a
233 temporary transfer to the Department of Behavioral Health and Developmental
234 Disabilities is clinically indicated for his or her mental illness or ~~mental retardation~~
235 intellectual disability, then the defendant shall be transferred to the Department of
236 Behavioral Health and Developmental Disabilities pursuant to procedures set forth in
237 regulations of the Department of Corrections and the Department of Behavioral Health
238 and Developmental Disabilities. In all such cases, the legal custody of the defendant shall
239 be retained by the Department of Corrections. Upon notification from the Department
240 of Behavioral Health and Developmental Disabilities to the Department of Corrections
241 that hospitalization at a Department of Behavioral Health and Developmental Disabilities

242 facility is no longer clinically indicated for his or her mental illness or ~~mental retardation~~
 243 intellectual disability, the Department of Corrections shall transfer the defendant back to
 244 its physical custody and shall place such individual in an appropriate penal institution.

245 (h) If a defendant who is found guilty but mentally ill at the time of a felony or guilty but
 246 ~~mentally retarded~~ with intellectual disability is placed on probation under the 'State-wide
 247 Probation Act,' Article 2 of Chapter 8 of Title 42, the court may require that the defendant
 248 undergo available outpatient medical or psychiatric treatment or seek similar available
 249 voluntary inpatient treatment as a condition of probation. Persons required to receive such
 250 services may be charged fees by the provider of the services.

251 (i) In any case in which the defense of insanity is interposed or a plea of guilty but
 252 mentally ill at the time of the felony or a plea of guilty but ~~mentally retarded~~ with
 253 intellectual disability is made and an examination is made of the defendant pursuant to
 254 Code Section 17-7-130.1 or paragraph (2) of subsection (b) of this Code section, upon the
 255 defendant's being found guilty or guilty but mentally ill at the time of the crime or guilty
 256 but ~~mentally retarded~~ with intellectual disability, a copy of any such examination report
 257 shall be forwarded to the Department of Corrections with the official sentencing document.
 258 The Department of Behavioral Health and Developmental Disabilities shall forward, in
 259 addition to its examination report, any records maintained by such department that it deems
 260 appropriate pursuant to an agreement with the Department of Corrections, within ten
 261 business days of receipt by the Department of Behavioral Health and Developmental
 262 Disabilities of the official sentencing document from the Department of Corrections.

263 (j)(1) In the trial of any case in which the death penalty is sought which commences on
 264 or after July 1, 1988, should the judge find in accepting a plea of guilty but mentally
 265 retarded, or the jury or court find in its verdict that the defendant is guilty of the crime
 266 charged but mentally retarded, the death penalty shall not be imposed and the court shall
 267 sentence the defendant to imprisonment for life.

268 (2) In the trial of any case in which the death penalty is sought which commences on or
 269 after July 1, 2017, should the judge find in accepting a plea of guilty but with intellectual
 270 disability, or the jury or court find in its verdict that the defendant is guilty of the crime
 271 charged but with intellectual disability, the death penalty shall not be imposed and the
 272 court shall sentence the defendant to imprisonment for life."

273 SECTION 4.

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