

The Senate Committee on Public Safety offered the following substitute to SB 99:

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 16-11-129 of the Official Code of Georgia Annotated, relating to
2 weapons carry license, temporary renewal permit, mandamus, and verification of license, so
3 as to clarify the type of hospitalization as an inpatient in any mental hospital that prohibits
4 the issuance of a weapons carry license; to amend Code Section 35-3-34 of the Official Code
5 of Georgia Annotated, relating to disclosure and dissemination of criminal records to private
6 persons and businesses, resulting responsibility and liability of the Georgia Crime
7 Information Center, and provision of certain information to the FBI in conjunction with the
8 National Instant Criminal Background Check System, so as to provide for judicial procedures
9 for purging a person's involuntary hospitalization information received by the center for the
10 purpose of the National Instant Criminal Background Check System under certain
11 circumstances; to change provisions relating to the retention of a person's involuntary
12 hospitalization information; to amend Title 37 of the Official Code of Georgia Annotated,
13 relating to mental health, so to require judicial notification to certain persons admitted to
14 certain facilities of certain firearm prohibitions that attach to such admission; to provide for
15 retention of jurisdiction; to provide for related matters; to repeal conflicting laws; and for
16 other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 SECTION 1.

19 Code Section 16-11-129 of the Official Code of Georgia Annotated, relating to weapons
20 carry license, temporary renewal permit, mandamus, and verification of license, is amended
21 by revising subparagraph (b)(2)(J) as follows:

22 "(J) Except as provided for in subsection (b.1) of this Code section, any person who has
23 been involuntarily hospitalized as an inpatient in any mental hospital or alcohol or drug
24 treatment center within the five years immediately preceding the application. The judge
25 of the probate court may require any applicant to sign a waiver authorizing any mental
26 hospital or treatment center to inform the judge whether or not the applicant has been

27 an inpatient in any such facility in the last five years and authorizing the superintendent
 28 of such facility to make to the judge a recommendation regarding whether the applicant
 29 is a threat to the safety of others and whether a license to carry a weapon should be
 30 issued. When such a waiver is required by the judge, the applicant shall pay a fee of
 31 \$3.00 for reimbursement of the cost of making such a report by the mental health
 32 hospital, alcohol or drug treatment center, or the Department of Behavioral Health and
 33 Developmental Disabilities, which the judge shall remit to the hospital, center, or
 34 department. The judge shall keep any such hospitalization or treatment information
 35 confidential. It shall be at the discretion of the judge, considering the circumstances
 36 surrounding the hospitalization and the recommendation of the superintendent of the
 37 hospital or treatment center where the individual was a patient, to issue the weapons
 38 carry license or renewal license;"

39 **SECTION 2.**

40 Code Section 35-3-34 of the Official Code of Georgia Annotated, relating to disclosure and
 41 dissemination of criminal records to private persons and businesses, resulting responsibility
 42 and liability of the Georgia Crime Information Center, and provision of certain information
 43 to the FBI in conjunction with the National Instant Criminal Background Check System, is
 44 amended by revising subsection (e) as follows:

45 "(e)(1) The Georgia Crime Information Center shall be authorized to provide criminal
 46 history records, wanted person records, and involuntary hospitalization records
 47 information to the Federal Bureau of Investigation or any successor agency for the sole
 48 purpose of inclusion in ~~conjunction with~~ the National Instant Criminal Background
 49 Check System in accordance with the federal Brady Handgun Violence Prevention Act,
 50 18 U.S.C. Section 921, et seq.; provided, however, that with respect to involuntary
 51 hospitalization records, the center shall forward only such information as is necessary to
 52 identify such persons.

53 (2) The records of the ~~Georgia Crime Information Center~~ center shall include
 54 information as to whether a person has been involuntarily hospitalized. Notwithstanding
 55 any other provisions of law and in order to carry out the provisions of this Code section
 56 and Code Section 16-11-172, the ~~Georgia Crime Information Center~~ center shall be
 57 provided such information and no other mental health information from the involuntary
 58 hospitalization records of the probate courts concerning persons involuntarily
 59 hospitalized after March 22, 1995, in a manner agreed upon by ~~the Probate Judges~~
 60 Training Council and the Georgia Bureau of Investigation The Council of Probate Court
 61 Judges of Georgia and the bureau to preserve the confidentiality of patients' rights in all
 62 other respects. Further, notwithstanding any other provisions of law and in order to carry

63 out the provisions of this Code section and Code Section 16-11-172, the center shall be
 64 provided information as to whether a person has been adjudicated mentally incompetent
 65 to stand trial or not guilty by reason of insanity at the time of the crime, has been
 66 involuntarily hospitalized, or both from the records of the clerks of the superior courts
 67 concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed
 68 upon by The Council of Superior Court Clerks of Georgia and the ~~Georgia Bureau of~~
 69 ~~Investigation~~ bureau to preserve the confidentiality of patients' rights in all other respects.

70 (2.1)(A) When a person's mental health information has been submitted pursuant to
 71 paragraph (2) of this subsection, such person may petition the court in which such
 72 hospitalization proceedings occurred for relief. A copy of such petition for relief shall
 73 be served upon the opposing civil party or the prosecuting attorney, as the case may be,
 74 or their successors, who appeared in the underlying case. Within 60 days of the receipt
 75 of such petition, such court shall hold a hearing on such petition; provided, however,
 76 that such time period may be extended for good cause as determined by the court. The
 77 prosecuting attorney may represent the interests of the state at such hearing.

78 (B) At the hearing provided for under this paragraph, the court shall receive and
 79 consider evidence concerning:

80 (i) The circumstances which caused the petitioner's hospitalization and regarding
 81 firearm disabilities from which relief is sought;

82 (ii) The petitioner's mental health and criminal history records, if any. The court
 83 shall require the petitioner to sign a waiver authorizing the record custodian of any
 84 hospital where such petitioner received mental health treatment for such
 85 hospitalization or any other facility or outpatient treatment center where he or she
 86 received mental health treatment since such hospitalization to release such records to
 87 the court. The court shall keep such hospitalization and treatment records confidential
 88 to the extent possible;

89 (iii) The petitioner's reputation, which shall be developed at a minimum through
 90 character witness statements, testimony, or other character evidence; and

91 (iv) Changes in the petitioner's condition or circumstances since the hospitalization
 92 relevant to the relief sought.

93 (C)(i) The court shall issue a written order of its decision on such petition filed under
 94 this paragraph no later than 30 days after the hearing.

95 (ii) The court shall grant such petition if it finds by a preponderance of the evidence
 96 that the petitioner will not likely act in a manner dangerous to public safety and that
 97 granting the relief will not be contrary to the public interest.

98 (iii) If the court grants such petition, the clerk of court shall report such order to the
 99 center immediately, but in no case later than ten days after the date of such order, and

100 the center shall purge and remove such record that is the subject of the order from any
101 data base in which the center makes available to the National Instant Criminal
102 Background Check System and notify the United States Attorney General that the
103 basis for such record being made available no longer is applicable, as soon as
104 practicable but not later than 30 days after receipt of such order.

105 (iv) No petition for relief may be filed within a period of one year from the date of
106 the final order on a previous petition for relief.

107 (2.2)(A) After five years have elapsed from the date that a person's involuntary
108 hospitalization information has been received by the Georgia Crime Information Center
109 or not purged for an additional five-year period as provided for under this paragraph,
110 the center shall purge its records of such information as soon as practicable and in any
111 event purge such records within 30 days after the expiration of such five-year period
112 provided for in this paragraph.

113 (B) Within 30 days of the expiration of such five-year period, the center shall notify
114 the court retaining jurisdiction over the case of a person's involuntary hospitalization
115 of the pending expiration of such five-year period. Within 15 days of the receipt of
116 such notice, such court retaining jurisdiction shall decide whether, in its discretion
117 based upon the facts of the underlying case, to hold a hearing to determine whether
118 public safety and the public interest requires that such person's involuntary
119 hospitalization information not be purged for an additional five-year period.

120 (C)(i) If the court decides not to hold a hearing, the court shall issue an order of its
121 decision not to hold a hearing and the clerk of court shall report such order to the
122 center immediately, but in no case later than ten days after the date of such decision,
123 and the center shall purge and remove such record that is the subject of the order from
124 any data base in which the center makes available to the National Instant Criminal
125 Background Check System and notify the United States Attorney General that the
126 basis for such record being made available is no longer applicable, as soon as
127 practicable but not later than 30 days after receipt of such order.

128 (ii) If the court decides to hold a hearing, the court shall issue a notice of hearing to
129 the person whose involuntary hospitalization records are the subject of such hearing
130 and the opposing civil party or the prosecuting attorney, as the case may be, or their
131 successors, who appeared in the underlying case. The court shall hold such hearing
132 within 30 days of its decision to hold a hearing; provided, however, that in its
133 discretion the court may extend the time for the holding of such hearing for good
134 cause. The provisions of subparagraphs (D) and (E) shall apply to such hearing.

135 (D) At the hearing provided for under this paragraph, the court shall receive and
136 consider evidence concerning:

137 (i) The circumstances which caused the person's hospitalization and regarding
138 firearm disabilities from which relief is sought;

139 (ii) The person's mental health and criminal history records, if any. The court shall
140 require the person to sign a waiver authorizing the record custodian of any hospital
141 where such person received mental health treatment for such hospitalization or any
142 other facility or outpatient treatment center where he or she received mental health
143 treatment since such hospitalization to release such records to the court. The court
144 shall keep such hospitalization and treatment records confidential to the extent
145 possible;

146 (iii) The person's reputation, which shall be developed at a minimum through
147 character witness statements, testimony, or other character evidence; and

148 (iv) Changes in the person's condition or circumstances since the hospitalization
149 relevant to the relief sought.

150 (E)(i) The court shall issue a written order of its decision on such petition filed under
151 this paragraph no later than 30 days after the hearing.

152 (ii) If the court does not find by clear and convincing evidence that the person will
153 likely act in a manner dangerous to public safety and that purging such records will
154 not be contrary to the public interest, it shall order that such person's involuntary
155 hospitalization information be purged. The clerk of court shall then report such order
156 to the center immediately, but in no case later than ten days after the date of such
157 order, and the center shall purge and remove such record that is the subject of the
158 order from any data base in which the center makes available to the National Instant
159 Criminal Background Check System and notify the United States Attorney General
160 that the basis for such record being made available no longer is applicable, as soon as
161 practicable but not later than 30 days after receipt of such order. Otherwise, the court
162 shall order that the person's involuntary hospitalization not be purged for an additional
163 five-year period; provided, however, that during such additional five-year period the
164 person may petition pursuant to paragraph (2.1) of this subsection.

165 (2.3)(A) A record shall be kept of hearings conducted pursuant to paragraphs (2.1) and
166 (2.2) of this subsection. Such record shall be exempt from disclosure under Article 4
167 of Chapter 18 of Title 50.

168 (B) Any appeal of the court's ruling filed pursuant to paragraphs (2.1) and (2.2) of this
169 subsection shall be as provided for by the laws governing the appeal of decisions from
170 such court; provided, however, that notwithstanding Code Section 5-3-2, any such
171 appeal from a probate court, as defined in Code Section 15-9-120, shall be by de novo
172 investigation to the superior court.

173 (C) Information received by a prosecuting attorney pursuant to paragraph (2.1) or (2.2)
 174 of this subsection shall not be used against the person who is the subject of the petition
 175 in any other case or context unless such information is obtained in such other case or
 176 context by other rules of evidence or discovery.

177 (3)(A) The records of the center shall include information as to whether a person has
 178 been involuntarily hospitalized. In order to carry out the provisions of Code Section
 179 16-11-129, the center shall be provided such information and no other mental health
 180 information from the records of the probate and superior courts ordering persons to be
 181 involuntarily hospitalized. With respect to probate court records, such information shall
 182 be provided in a manner agreed upon by the Probate Judges Training Council and the
 183 bureau. With respect to superior court records, such information shall be provided in
 184 a manner agreed upon by The Council of Superior Court Clerks of Georgia and the
 185 bureau. Such records shall be provided in a manner so as to preserve the confidentiality
 186 of patients' rights in all other respects.

187 (B) In order to carry out the provisions of Code Section 16-11-129, the center shall be
 188 provided information as to whether a person has been adjudicated mentally incompetent
 189 to stand trial or has been found not guilty by reason of insanity at the time of the crime.
 190 The clerk of court shall report such information to the center immediately, but in no
 191 case later than ten days after such adjudication of mental incompetence or finding of
 192 not guilty by reason of insanity."

193 **SECTION 3.**

194 Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended in
 195 Code Section 37-3-62, relating to hearing on petition for court ordered evaluation, recipients
 196 of hearing notice, appointment of representatives, contents of notice, patient's right to
 197 counsel, waiver of hearing, and procedure upon issuance of order for evaluation, by revising
 198 subsection (b) as follows:

199 "(b) After a full and fair hearing or, if the hearing is waived, after a full review of the
 200 evidence, if the court is satisfied that immediate evaluation is necessary, the court shall
 201 issue an order to any peace officer to deliver the patient forthwith to the evaluating facility
 202 designated by the department to admit persons ordered by that court to be evaluated. The
 203 court shall provide notification to any person admitted to a facility under this Code section
 204 of the prohibitions pursuant to 18 U.S.C. Section 922(d)(4) and (g)(4) that attach to such
 205 admission. The court shall retain jurisdiction of the case for purposes of Code Section
 206 35-3-34."

207

SECTION 4.

208

Said title is further amended by revising subsection (b) of Code Section 37-7-62, relating to hearing on petition for court ordered evaluation, notice, appointment of representatives, patient's right to counsel, waiver of hearing by patient, and procedure upon issuance of order for evaluation, as follows:

209

210

211

212

"(b) After a full and fair hearing or, if the hearing is waived, after a full review of the evidence, if the court is satisfied that immediate evaluation is necessary, the court shall issue an order to any peace officer to deliver the patient forthwith to the evaluating facility designated by the department to admit persons ordered by that court to be evaluated. The court shall provide notification to any person admitted to a facility under this Code section of the prohibitions pursuant to 18 U.S.C. Section 922(d)(4) and (g)(4) that attach to such admission. The court shall retain jurisdiction of the case for purposes of Code Section 35-3-34."

213

214

215

216

217

218

219

220

SECTION 5.

221

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