

## Senate Bill 99

By: Senators Parent of the 42nd, Harper of the 7th, Jones II of the 22nd, Jones of the 10th, Rhett of the 33rd and others

**AS PASSED SENATE****A BILL TO BE ENTITLED****AN ACT**

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

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

18 **SECTION 1.**

19 Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,  
 20 relating to carrying and possession of firearms, is amended by revising paragraph (2) of Code  
 21 Section 16-11-125.1, relating to definitions, as follows:

22 "(2) 'Knife' means a cutting instrument designed for the purpose of offense and defense  
 23 consisting of a blade that is greater than 12 inches in length which is fastened to a  
 24 handle."

25 **SECTION 1A.**

26 Said part is further amended by revising subparagraph (b)(2)(J) of Code Section 16-11-129,  
 27 relating to weapons carry license, temporary renewal permit, mandamus, and verification of  
 28 license, as follows:

29 "(J) Except as provided for in subsection (b.1) of this Code section, any person who has  
 30 been involuntarily hospitalized as an inpatient in any mental hospital or alcohol or drug  
 31 treatment center within the five years immediately preceding the application. The judge  
 32 of the probate court may require any applicant to sign a waiver authorizing any mental  
 33 hospital or treatment center to inform the judge whether or not the applicant has been  
 34 an inpatient in any such facility in the last five years and authorizing the superintendent  
 35 of such facility to make to the judge a recommendation regarding whether the applicant  
 36 is a threat to the safety of others and whether a license to carry a weapon should be  
 37 issued. When such a waiver is required by the judge, the applicant shall pay a fee of  
 38 \$3.00 for reimbursement of the cost of making such a report by the mental health  
 39 hospital, alcohol or drug treatment center, or the Department of Behavioral Health and  
 40 Developmental Disabilities, which the judge shall remit to the hospital, center, or  
 41 department. The judge shall keep any such hospitalization or treatment information  
 42 confidential. It shall be at the discretion of the judge, considering the circumstances  
 43 surrounding the hospitalization and the recommendation of the superintendent of the  
 44 hospital or treatment center where the individual was a patient, to issue the weapons  
 45 carry license or renewal license;"

46 **SECTION 2.**

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

52 "(e)(1) The Georgia Crime Information Center shall be authorized to provide criminal  
 53 history records, wanted person records, and involuntary hospitalization records  
 54 information to the Federal Bureau of Investigation or any successor agency for the sole  
 55 purpose of inclusion ~~in conjunction with~~ the National Instant Criminal Background  
 56 Check System in accordance with the federal Brady Handgun Violence Prevention Act,  
 57 18 U.S.C. Section 921, et seq.; provided, however, that with respect to involuntary  
 58 hospitalization records, the center shall forward only such information as is necessary to  
 59 identify such persons.

60 (2) The records of the ~~Georgia Crime Information Center~~ center shall include  
 61 information as to whether a person has been involuntarily hospitalized. Notwithstanding  
 62 any other provisions of law and in order to carry out the provisions of this Code section  
 63 and Code Section 16-11-172, the ~~Georgia Crime Information Center~~ center shall be  
 64 provided such information and no other mental health information from the involuntary  
 65 hospitalization records of the probate courts concerning persons involuntarily  
 66 hospitalized after March 22, 1995, in a manner agreed upon by ~~the Probate Judges~~  
 67 ~~Training Council and the Georgia Bureau of Investigation~~ The Council of Probate Court  
 68 Judges of Georgia and the bureau to preserve the confidentiality of patients' rights in all  
 69 other respects. Further, notwithstanding any other provisions of law and in order to carry  
 70 out the provisions of this Code section and Code Section 16-11-172, the center shall be  
 71 provided information as to whether a person has been adjudicated mentally incompetent  
 72 to stand trial or not guilty by reason of insanity at the time of the crime, has been  
 73 involuntarily hospitalized, or both from the records of the clerks of the superior courts  
 74 concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed  
 75 upon by The Council of Superior Court Clerks of Georgia and the ~~Georgia Bureau of~~  
 76 ~~Investigation~~ bureau to preserve the confidentiality of patients' rights in all other respects.

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

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

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

89 (ii) The petitioner's mental health and criminal history records, if any. The court  
 90 shall require the petitioner to sign a waiver authorizing the record custodian of any  
 91 hospital where such petitioner received mental health treatment for such  
 92 hospitalization or any other facility or outpatient treatment center where he or she  
 93 received mental health treatment since such hospitalization to release such records to  
 94 the court. The court shall keep such hospitalization and treatment records confidential  
 95 to the extent possible;

96 (iii) The petitioner's reputation, which shall be developed at a minimum through  
97 character witness statements, testimony, or other character evidence; and  
98 (iv) Changes in the petitioner's condition or circumstances since the hospitalization  
99 relevant to the relief sought.

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

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

105 (iii) If the court grants such petition, the clerk of court shall report such order to the  
106 center immediately, but in no case later than ten days after the date of such order, and  
107 the center shall purge and remove such record that is the subject of the order from any  
108 data base in which the center makes available to the National Instant Criminal  
109 Background Check System and notify the United States Attorney General that the  
110 basis for such record being made available no longer is applicable, as soon as  
111 practicable but not later than 30 days after receipt of such order.

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

114 (2.2)(A) After five years have elapsed from the date that a person's involuntary  
115 hospitalization information has been received by the Georgia Crime Information Center  
116 or not purged for an additional five-year period as provided for under this paragraph,  
117 the center shall purge its records of such information as soon as practicable and in any  
118 event purge such records within 30 days after the expiration of such five-year period  
119 provided for in this paragraph.

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

127 (C)(i) If the court decides not to hold a hearing, the court shall issue an order of its  
128 decision not to hold a hearing and the clerk of court shall report such order to the  
129 center immediately, but in no case later than ten days after the date of such decision,  
130 and the center shall purge and remove such record that is the subject of the order from  
131 any data base in which the center makes available to the National Instant Criminal  
132 Background Check System and notify the United States Attorney General that the

133 basis for such record being made available is no longer applicable, as soon as  
134 practicable but not later than 30 days after receipt of such order.

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

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

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

146 (ii) The person's mental health and criminal history records, if any. The court shall  
147 require the person to sign a waiver authorizing the record custodian of any hospital  
148 where such person received mental health treatment for such hospitalization or any  
149 other facility or outpatient treatment center where he or she received mental health  
150 treatment since such hospitalization to release such records to the court. The court  
151 shall keep such hospitalization and treatment records confidential to the extent  
152 possible;

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

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

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

159 (ii) If the court does not find by clear and convincing evidence that the person will  
160 likely act in a manner dangerous to public safety and that purging such records will  
161 not be contrary to the public interest, it shall order that such person's involuntary  
162 hospitalization information be purged. The clerk of court shall then report such order  
163 to the center immediately, but in no case later than ten days after the date of such  
164 order, and the center shall purge and remove such record that is the subject of the  
165 order from any data base in which the center makes available to the National Instant  
166 Criminal Background Check System and notify the United States Attorney General  
167 that the basis for such record being made available no longer is applicable, as soon as  
168 practicable but not later than 30 days after receipt of such order. Otherwise, the court  
169 shall order that the person's involuntary hospitalization not be purged for an additional

170 five-year period; provided, however, that during such additional five-year period the  
 171 person may petition pursuant to paragraph (2.1) of this subsection.

172 (2.3)(A) A record shall be kept of hearings conducted pursuant to paragraphs (2.1) and  
 173 (2.2) of this subsection. Such record shall be exempt from disclosure under Article 4  
 174 of Chapter 18 of Title 50.

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

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

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

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

200 **SECTION 3.**

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

206 "(b) After a full and fair hearing or, if the hearing is waived, after a full review of the  
207 evidence, if the court is satisfied that immediate evaluation is necessary, the court shall  
208 issue an order to any peace officer to deliver the patient forthwith to the evaluating facility  
209 designated by the department to admit persons ordered by that court to be evaluated. The  
210 court shall provide notification to any person admitted to a facility under this Code section  
211 of the prohibitions pursuant to 18 U.S.C. Section 922(d)(4) and (g)(4) that attach to such  
212 admission. The court shall retain jurisdiction of the case for purposes of Code Section  
213 35-3-34."

214 **SECTION 4.**

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

219 "(b) After a full and fair hearing or, if the hearing is waived, after a full review of the  
220 evidence, if the court is satisfied that immediate evaluation is necessary, the court shall  
221 issue an order to any peace officer to deliver the patient forthwith to the evaluating facility  
222 designated by the department to admit persons ordered by that court to be evaluated. The  
223 court shall provide notification to any person admitted to a facility under this Code section  
224 of the prohibitions pursuant to 18 U.S.C. Section 922(d)(4) and (g)(4) that attach to such  
225 admission. The court shall retain jurisdiction of the case for purposes of Code Section  
226 35-3-34."

227 **SECTION 5.**

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