

The Senate Committee on Judiciary offered 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2 so as to replace certain outdated terminology, as it relates to the use of "mental retardation"  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:

**SECTION 1.**

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

**SECTION 2.**

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

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, mental illness, or intellectual  
 63 disability is interposed, the jury, or the court if tried by it, shall find whether the  
 64 defendant is:

65 (A) Guilty;

66 (B) Not guilty;

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

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

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

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

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

86 (3) In all cases in which the defense of insanity, mental illness, or intellectual disability  
 87 is interposed, the trial judge shall charge the jury, in addition to other appropriate charges,  
 88 the following:

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

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

96 mental health needs of the defendant, which may include, at the discretion of the  
 97 Department of Corrections, referral for temporary hospitalization at a facility operated  
 98 by the Department of Behavioral Health and Developmental Disabilities.

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

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

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

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

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

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

132 (e)(1) After the expiration of the 30 days' evaluation period in the state mental health  
133 facility, if the evaluation report from the Department of Behavioral Health and  
134 Developmental Disabilities indicates that the defendant does not meet the inpatient  
135 commitment criteria of Chapter 3 of Title 37 or Chapter 4 of Title 37, the trial judge may  
136 issue an order discharging the defendant from custody without a hearing.

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

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

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

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

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

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

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

169 (E) Notice of the right to have established an individualized service plan specifically  
170 tailored to the person's treatment needs, as such plans are defined in Chapter 3 of Title  
171 37 and Chapter 4 of Title 37; and

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

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

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

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

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

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

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

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

205 (f) A defendant who has been found not guilty by reason of insanity at the time of the  
 206 crime and is ordered committed to the Department of Behavioral Health and  
 207 Developmental Disabilities under subsection (e) of this Code section may only be  
 208 discharged from that commitment by order of the committing court in accordance with the  
 209 procedures specified in this subsection:

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

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

219 (3) If the finding of the court is adverse to release in such hearing held pursuant to this  
 220 subsection on the grounds that such defendant does meet the inpatient civil commitment  
 221 criteria, a further release application by the defendant shall not be heard by the court until  
 222 12 months have elapsed from the date of the hearing upon the last preceding application.  
 223 The Department of Behavioral Health and Developmental Disabilities shall have the  
 224 independent right to request a release hearing once every 12 months.

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

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

242 be retained by the Department of Corrections. Upon notification from the Department  
 243 of Behavioral Health and Developmental Disabilities to the Department of Corrections  
 244 that hospitalization at a Department of Behavioral Health and Developmental Disabilities  
 245 facility is no longer clinically indicated for his or her mental illness or ~~mental retardation~~  
 246 intellectual disability, the Department of Corrections shall transfer the defendant back to  
 247 its physical custody and shall place such individual in an appropriate penal institution.

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

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

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

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

276

#### SECTION 4.

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