

The House Committee on Judiciary Non-Civil offers the following substitute to SB 99:

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 ~~five~~ 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 ~~After five years have elapsed from the date that a person's involuntary hospitalization~~
 78 ~~information has been received by the Georgia Crime Information Center, the center shall~~
 79 ~~purge its records of such information as soon as practicable and in any event purge such~~
 80 ~~records within 30 days after the expiration of such five-year period.~~

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

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

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

93 (ii) The petitioner's mental health and criminal history records, if any. The court
 94 shall require the petitioner to sign a waiver authorizing the record custodian of any
 95 hospital where such petitioner received mental health treatment for such
 96 hospitalization or any other facility or outpatient treatment center where he or she

97 received mental health treatment since such hospitalization to release such records to
98 the court. The court shall keep such hospitalization and treatment records confidential
99 to the maximum extent possible;
100 (iii) The petitioner's reputation, which shall be developed at a minimum through
101 character witness statements, testimony, or other character evidence; and
102 (iv) Changes in the petitioner's condition or circumstances since the hospitalization
103 relevant to the relief sought.
104 (C)(i) The court shall issue a written order of its decision on such petition filed under
105 this paragraph no later than 30 days after the hearing.
106 (ii) The court shall grant such petition if it finds by a preponderance of the evidence
107 that the petitioner will not likely act in a manner dangerous to public safety and that
108 granting the relief will not be contrary to the public interest.
109 (iii) If the court grants such petition, the clerk of court shall report such order to the
110 center immediately, but in no case later than ten days after the date of such order, and
111 the center shall purge and remove such record that is the subject of the order from any
112 data base in which the center makes available to the National Instant Criminal
113 Background Check System and notify the United States Attorney General that the
114 basis for such record being made available no longer is applicable, as soon as
115 practicable but not later than 30 days after receipt of such order.
116 (iv) No petition for relief may be filed within a period of one year from the date of
117 the final order on a previous petition for relief.
118 (2.2)(A) A record shall be kept of hearings conducted pursuant to paragraph (2.1) of
119 this subsection. Such record shall be exempt from disclosure under Article 4 of Chapter
120 18 of Title 50.
121 (B) Any appeal of the court's ruling filed pursuant to paragraph (2.1) of this subsection
122 shall be as provided for by the laws governing the appeal of decisions from such court;
123 provided, however, that notwithstanding Code Section 5-3-2, any such appeal from a
124 probate court, as defined in Code Section 15-9-120, shall be by de novo investigation
125 to the superior court.
126 (C) Information received by a prosecuting attorney pursuant to paragraph (2.1) of this
127 subsection shall not be used against the person who is the subject of the petition in any
128 other case or context unless such information is obtained in such other case or context
129 by other rules of evidence or discovery.
130 (3)(A) The records of the center shall include information as to whether a person has
131 been involuntarily hospitalized. In order to carry out the provisions of Code Section
132 16-11-129, the center shall be provided such information and no other mental health
133 information from the records of the probate and superior courts ordering persons to be

134 involuntarily hospitalized. With respect to probate court records, such information shall
 135 be provided in a manner agreed upon by the Probate Judges Training Council and the
 136 bureau. With respect to superior court records, such information shall be provided in
 137 a manner agreed upon by The Council of Superior Court Clerks of Georgia and the
 138 bureau. Such records shall be provided in a manner so as to preserve the confidentiality
 139 of patients' rights in all other respects.

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

146 **SECTION 3.**

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

152 "(b) After a full and fair hearing or, if the hearing is waived, after a full review of the
 153 evidence, if the court is satisfied that immediate evaluation is necessary, the court shall
 154 issue an order to any peace officer to deliver the patient forthwith to the evaluating facility
 155 designated by the department to admit persons ordered by that court to be evaluated. The
 156 court shall provide notification to any person admitted to a facility under this Code section
 157 of the prohibitions pursuant to 18 U.S.C. Section 922(d)(4) and (g)(4) that attach to such
 158 admission. The court shall retain jurisdiction of the case for purposes of Code Section
 159 35-3-34."

160 **SECTION 4.**

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

165 "(b) After a full and fair hearing or, if the hearing is waived, after a full review of the
 166 evidence, if the court is satisfied that immediate evaluation is necessary, the court shall
 167 issue an order to any peace officer to deliver the patient forthwith to the evaluating facility
 168 designated by the department to admit persons ordered by that court to be evaluated. The

169 court shall provide notification to any person admitted to a facility under this Code section
170 of the prohibitions pursuant to 18 U.S.C. Section 922(d)(4) and (g)(4) that attach to such
171 admission. The court shall retain jurisdiction of the case for purposes of Code Section
172 35-3-34."

173

SECTION 5.

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