

The Senate Judiciary Committee offered the following substitute to HB 421:

A BILL TO BE ENTITLED
AN ACT

To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, so as to change provisions relating to the proceedings upon a plea of mental incompetency to stand trial; to provide for definitions and the use of consistent terminology; to provide for a bench or special jury trial for competency proceedings; to clarify procedures for competency evaluations; to provide that an accused determined to be mentally competent to stand trial may be housed by the Department of Behavioral Health and Developmental Disabilities under certain circumstances; to provide for maximum commitment to the Department of Behavioral Health and Developmental Disabilities under certain circumstances; to reorganize the Code relative to competency evaluations and procedures; to provide for a court to request a competency evaluation under certain circumstances; to change provisions relating to demands for speedy trial; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended in Part 2 of Article 6 of Chapter 7, relating to insanity and mental incompetency, by adding a new Code section to read as follows:

"17-7-129.

(a) When information becomes known to the court sufficient to raise a bona fide doubt regarding the accused's mental competency to stand trial, the court has a duty, sua sponte, to inquire into the accused's mental competency to stand trial. The court may order the Department of Behavioral Health and Developmental Disabilities to conduct an evaluation of the accused's competency. If the court determines that it is necessary to have a trial on the issue of competency, the court shall follow the procedures set forth in Code Section 17-7-130. The court's order shall set forth those facts which give rise to its bona fide doubt as to the accused's mental competency to stand trial. The evaluation of the Department of

Behavioral Health and Developmental Disabilities shall be submitted to the court, and the court shall submit such evaluation to the attorney for the accused or, if pro se, to the accused, but otherwise, the report shall remain under seal.

(b) If the court orders a competency evaluation and the accused serves notice of a special plea of mental incompetency to stand trial or raises the issue of insanity, the court shall release the competency evaluation to the prosecuting attorney. Such evaluation shall not be released to any other person absent a court order."

SECTION 2.

Said title is further amended by revising Code Section 17-7-130, relating to the proceedings upon a plea of mental incompetency to stand trial, as follows:

"17-7-130.

(a) As used in this Code section, the term:

(1) 'Child' means a an accused person under the jurisdiction of the superior court pursuant to Code Section 15-11-28.

(2) 'Civil commitment' means the accused's involuntary inpatient or outpatient commitment pursuant to Chapter 3 or 4 of Title 37, as appropriate.

~~(2)(3)~~ 'Court' ~~'Committing court'~~ means the court which has jurisdiction over the criminal charges against the defendant accused.

~~(3)(4)~~ 'Department' means the Department of Behavioral Health and Developmental Disabilities.

~~(5)~~ 'Developmental disability' shall have the same meaning as set forth in paragraph (8) of Code Section 37-1-1.

~~(4)(6)~~ 'Inpatient' shall have the same meaning as in paragraph (9.1) of Code Section 37-3-1; provided, however, that as applied to a child for purposes of this Code section, the term shall mean a child who is mentally ill or has a developmental disability and is in need of involuntary placement.

~~(5)(7)~~ 'Nonviolent offense' means any offense other than: a violent offense.

~~(A)(i) Murder;~~

~~(ii) Rape;~~

~~(iii) Aggravated sodomy;~~

~~(iv) Armed robbery;~~

~~(v) Aggravated assault;~~

~~(vi) Hijacking of a motor vehicle or an aircraft;~~

~~(vii) Aggravated battery;~~

~~(viii) Aggravated sexual battery;~~

~~(ix) Aggravated child molestation;~~

~~(x) Aggravated stalking;~~

~~(xi) Arson in the first degree and in the second degree;~~

~~(xii) Stalking;~~

~~(xiii) Fleeing and attempting to elude a police officer;~~

~~(xiv) Any sexual offense against a minor; or~~

~~(xv) Any offense which involves the use of a deadly weapon or destructive device;~~

~~and~~

~~(B) Those felony offenses deemed by the committing court to involve an allegation of actual or potential physical harm to another person.~~

~~(6)(8)~~ (8) 'Outpatient' shall have the same meaning as in paragraph (12.1) of Code Section 37-3-1, provided that:

(A) As applied to a child for purposes of this Code section, the term shall mean a child who is mentally ill or has a developmental disability and is in need of involuntary placement; and

(B) The court determines that the ~~defendant~~ accused meets the criteria for release on bail or other pre-trial release pursuant to Code Section 17-6-1.

(9) 'Serious violent felony' shall have the same meaning as set forth in Code Section 17-10-6.1.

(10) 'Sexual offense' shall have the same meaning as set forth in Code Section 17-10-6.2.

(11) 'Violent offense' means:

(A)(i) A serious violent felony;

(ii) A sexual offense;

(iii) Criminal attempt to commit a serious violent felony;

(iv) Criminal attempt to commit a sexual offense;

(v) Aggravated assault;

(vi) Hijacking of a motor vehicle or an aircraft;

(vii) Aggravated battery;

(viii) Aggravated stalking;

(ix) Arson in the first degree or in the second degree;

(x) Stalking;

(xi) Fleeing and attempting to elude a police officer;

(xii) Any offense which involves the use of a deadly weapon or destructive device;

and

(B) Those felony offenses deemed by the court to involve an allegation of actual or potential physical harm to another person.

~~(b) Whenever a plea is filed that a defendant in a criminal case is mentally incompetent to stand trial, it shall be the duty of the court to cause the issue of the defendant's mental~~

competency to stand trial to be tried first by a special jury. If the special jury finds the defendant mentally incompetent to stand trial, the court shall retain jurisdiction over the defendant but shall transfer the defendant to the Department of Behavioral Health and Developmental Disabilities and if the defendant is a child, the department shall be authorized to place such defendant in a secure hospital or secure community facility designated by the department; provided, however, that if the defendant is charged with a misdemeanor offense other than as included in subparagraph (a)(5)(A) of this Code section or a nonviolent offense, the court may, in its discretion, retain jurisdiction over the defendant, and may allow evaluation to be done on an outpatient basis by the Department of Behavioral Health and Developmental Disabilities. If the court allows outpatient evaluation and the defendant is in custody, the court may release the defendant in accordance with the provisions of Code Section 17-6-1, et seq.

(c) Within 90 days after the Department of Behavioral Health and Developmental Disabilities has received actual custody of a defendant or, in the case of an outpatient, a court order requiring evaluation of a defendant pursuant to subsection (b) of this Code section, the defendant shall be evaluated and a diagnosis made as to whether the defendant is presently mentally incompetent to stand trial and, if so, whether there is a substantial probability that the defendant will attain mental competency to stand trial in the foreseeable future. If the defendant is found to be mentally competent to stand trial, the department shall immediately report that finding and the reasons therefor to the committing court; and the defendant shall be returned to the court as provided for in subsection (f) of this Code section.

(d) If the defendant is found to be mentally incompetent to stand trial by the Department of Behavioral Health and Developmental Disabilities and there is not a substantial probability that the person will attain competency in the foreseeable future, the department shall return the physical custody of the defendant to a law enforcement officer of the jurisdiction of the court which committed the defendant unless in the opinion of the department's attending physician, and with concurrence of the court, such detention by law enforcement would be detrimental to the well-being of the defendant, in which case the defendant may be held by the department until the date of the defendant's hearing. The department shall report to the committing court the finding regarding competency, the reasons therefor, and its opinion as to whether the defendant currently meets criteria for commitment as an inpatient or as an outpatient pursuant to Chapter 3 or 4 of Title 37. The law enforcement officer of the jurisdiction of the court which committed the defendant shall retain custody of the defendant and the committing court may order an independent evaluation of the defendant by a court appointed licensed clinical psychologist or psychiatrist, who shall report to the court in writing as to the current mental and emotional

condition of the defendant. Based on consideration of all evidence and all reports, the committing court may:

(1) If the defendant is not a child, refer the case to the probate court for commitment proceedings pursuant to Chapter 3 or 4 of Title 37, if appropriate and if the charges are dismissed for any reason; or

(2) Retain jurisdiction of the defendant and conduct a hearing at which it shall hear evidence and consider all psychiatric and psychological reports submitted to the court and determine whether the state has proved by clear and convincing evidence that the defendant meets the criteria for involuntary civil commitment as an inpatient or as an outpatient pursuant to Chapter 3 or 4 of Title 37, whichever is applicable. The burden of proof in such hearings shall be upon the state.

(A) If the defendant does not meet the criteria for inpatient or outpatient civil commitment, the defendant shall be released in accordance with the provisions of Code Section 17-6-1 et seq.

(B) If the defendant is found to meet the criteria for involuntary civil commitment as an inpatient or outpatient, the judge may issue an order committing the defendant; provided, however, that if the defendant is a child, the Department of Behavioral Health and Developmental Disabilities shall be authorized to place such defendant in a secure hospital or secure community facility designated by the department.

(i) If the defendant so committed is charged with a misdemeanor offense, the committing court may civilly commit the defendant for a period not to exceed one year. Following the commitment period, the charges against the defendant shall be dismissed by operation of law.

(ii) A defendant who is so committed and is charged with a felony may only be released from that inpatient or outpatient commitment by order of the committing court in accordance with the procedures specified in paragraphs (1) through (3) of subsection (f) of Code Section 17-7-131 except that the burden of proof in such release hearing shall be on the state and if the committed person cannot afford a physician or licensed clinical psychologist of the defendant's choice, the person may petition the court and the court may order such cost to be paid by the county.

The Department of Behavioral Health and Developmental Disabilities shall report annually to the committing court on whether the civilly committed defendant continues to meet criteria for involuntary commitment as an inpatient or an outpatient pursuant to Chapter 3 or 4 of Title 37. The committing court shall review the case and enter an appropriate order, either to renew the inpatient or outpatient civil commitment, to change the commitment either from inpatient to outpatient or from outpatient to inpatient, or in

the event charges are dismissed, transfer the jurisdiction of the case to the probate court for further proceedings pursuant to Title 37, if appropriate.

(e) If the defendant is found to be mentally incompetent to stand trial but there is a substantial probability that the person will attain competency in the foreseeable future, by the end of the 90 day period, or at any prior time, the department shall report that finding and the reasons therefor to the committing court and shall retain custody over the defendant for the purpose of continued treatment for an additional period not to exceed nine months; provided, however, that if the defendant is charged with a misdemeanor offense or a nonviolent offense, the court shall retain jurisdiction over the defendant, but may, in its discretion, allow continued treatment to be done on an outpatient basis by the Department of Behavioral Health and Developmental Disabilities. The department shall monitor the defendant's outpatient treatment for an additional period not to exceed nine months. If, by the end of the nine-month period or at any prior time if the defendant's condition warrants, the defendant is still found not to be competent to stand trial, irrespective of the probability of recovery in the foreseeable future, the department shall report that finding and the reasons therefor to the committing court. The committing court shall then follow the procedures in subsection (d) of this Code section for further commitment or release:

(f)(1) If the defendant found to be mentally incompetent to stand trial is at any time found by the Department of Behavioral Health and Developmental Disabilities to be mentally competent to stand trial, the committing court shall be notified. A defendant who is an inpatient and is found by the Department of Behavioral Health and Developmental Disabilities to be mentally competent to stand trial shall be discharged into the custody of a law enforcement officer of the jurisdiction of the court which committed the defendant to the department unless the charges which led to the commitment have been dismissed, in which case the defendant shall be discharged. In the event a law enforcement officer does not appear and take custody of the defendant within 20 days after notice to the appropriate law enforcement official in the jurisdiction of the committing court, the presiding judge of the committing court, and the prosecuting attorney for the court, the department shall itself return the defendant to one of the committing court's detention facilities; and the cost of returning the defendant shall be paid by the county in which the committing court is located. All notifications shall be sent by certified mail or statutory overnight delivery, return receipt requested. With the concurrence of the appropriate court and upon the recommendation of the department's attending physician, any defendant discharged as competent to stand trial may be held by the department instead of at the court's detention facilities whenever, in the attending physician's opinion, such detention in the court's facilities would be detrimental to the

~~well-being of the defendant so committed. Such alternative detention shall continue only until the date of the defendant's trial.~~

~~(2) A defendant who is an outpatient and is found by the Department of Behavioral Health and Developmental Disabilities to be mentally competent to stand trial may remain in the community under conditions of bond or other conditions ordered by the committing court, if any, until the date of the person's trial.~~

~~(g) Any person found by the Department of Behavioral Health and Developmental Disabilities to be mentally competent to stand trial returned to the court as provided in subsection (f) of this Code section shall again be entitled to file a special plea as provided for in this Code section.~~

~~(h) If a defendant is found to be mentally incompetent to stand trial, whether or not committed pursuant to this Code section, the state may file at any time a motion for rehearing on the issue of the defendant's mental competency. The court shall grant said motion upon a showing by the state that there are reasonable grounds to believe that the defendant's mental condition has changed. If this motion is granted, the case shall proceed as provided in subsection (b) of this Code section.~~

(b)(1) If an accused files a motion requesting a competency evaluation, the court may order the department to conduct an evaluation by a physician or licensed psychologist to determine the accused's mental competency to stand trial and, if such physician or licensed psychologist determines the accused to be mentally incompetent to stand trial, to make recommendations as to restoring the accused to competency. If the accused is a child, the department shall be authorized to place such child in a secure facility designated by the department. The department's evaluation shall be submitted to the court, and the court shall submit such evaluation to the attorney for the accused or if pro se, to the accused, but otherwise, the evaluation shall be under seal and shall not be released to any other person absent a court order.

(2) If the accused files a special plea alleging that the accused is mentally incompetent to stand trial, it shall be the duty of the court to have a bench trial, unless the state or the accused demands a special jury trial, to determine the accused's competency to stand trial. Once a special plea has been filed, the court shall submit the department's evaluation to the prosecuting attorney.

(c) If the court finds the accused is mentally incompetent to stand trial, the court may order a department physician or licensed psychologist to evaluate and diagnose the accused as to whether there is a substantial probability that the accused will attain mental competency to stand trial in the foreseeable future. The court shall retain jurisdiction over the accused and shall transfer the accused to the physical custody of the department. At its discretion, the court may allow the evaluation to be performed on the accused as an outpatient if the

accused is charged with a nonviolent offense. Such evaluation shall be performed within 90 days after the department has received actual custody of an accused or, in the case of an outpatient, a court order requiring evaluation of an accused. If the accused is a child, the department shall be authorized to place such child in a secure facility designated by the department. If the evaluation shows:

(1) That the accused is mentally competent to stand trial, the department shall immediately report that determination and the reasons therefor to the court, and the court shall submit such determination to the attorney for the accused or, if pro se, to the accused and to the prosecuting attorney. The accused shall be returned to the court as provided for in subsection (d) of this Code section;

(2) That the accused is mentally incompetent to stand trial and that there is not a substantial probability that the accused will attain competency in the foreseeable future, the court shall follow the procedures set forth in subsection (e) of this Code section for civil commitment or release; or

(3) That the accused is mentally incompetent to stand trial but there is a substantial probability that the accused will attain competency in the foreseeable future, by the end of the 90 day period, or at any prior time, the department shall report that finding and the reasons therefor to the court and shall retain custody over the accused for the purpose of continued treatment for an additional period not to exceed nine months; provided, however, that if the accused is charged with a misdemeanor offense or a nonviolent offense, the court shall retain jurisdiction over the accused but may, in its discretion, allow continued treatment to be done on an outpatient basis by the department. The department shall monitor the accused's outpatient treatment for the additional period not to exceed nine months. If, by the end of the nine-month period or at any prior time the accused's condition warrants, the accused is still determined by the department physician or licensed psychologist to be mentally incompetent to stand trial, irrespective of the probability of recovery in the foreseeable future, the department shall report that finding and the reasons therefor to the court. The court shall then follow the procedures in subsection (e) of this Code section for civil commitment or release.

(d)(1) If the department's physician or licensed psychologist determines at any time that the accused is mentally competent to stand trial, the department shall notify the court, and the accused shall be discharged into the custody of a sheriff of the jurisdiction of the court unless the charges which led to the evaluation or civil commitment have been dismissed, in which case, the accused shall be discharged from the department. In the event a sheriff does not appear and take custody of the accused within 20 days after notice to the appropriate sheriff of the jurisdiction of the court, the presiding judge of the court, and the prosecuting attorney for the court, the department shall itself return the accused to one

of the court's detention facilities, and the cost of returning the accused shall be paid by the county in which the court is located. All notifications under this paragraph shall be sent by certified mail or statutory overnight delivery, return receipt requested. As an alternative to returning the accused to the sheriff of the jurisdiction of the court, the department may hold the accused at the department's secure facility instead of at the court's detention facilities whenever a department physician or licensed psychologist provides written notice to the court that such detention in the court's facilities would be detrimental to the well-being of the accused. Such alternative detention shall continue only until the date of the accused's trial. Regardless of where the accused is held, the court shall hold a bench trial to determine the accused's mental competency to stand trial within 45 days of receiving the department's evaluation or, if demanded, shall conduct a special jury trial within six months of receiving the department's evaluation.

(2) If the accused is an outpatient and the department's physician or licensed psychologist determines at any time that the accused is mentally competent to stand trial, the accused may remain in the community under conditions of bond or other conditions ordered by the court, if any, until the date of the accused's trial, which shall be within 45 days of the court receiving the department's evaluation if tried by the court or within six months of receiving the department's evaluation if a special jury trial is demanded.

(e) If the evaluation performed pursuant to subsection (c) of this Code section shows that the accused is mentally incompetent to stand trial and that there is not a substantial probability that the accused will attain competency in the foreseeable future:

(1) If the accused is charged with a misdemeanor, the department shall return the physical custody of the accused to a sheriff of the jurisdiction of the court; provided, however, that as an alternative to returning the accused to the sheriff of the jurisdiction of the court, the department may hold the accused at the department's secure facility instead of at the court's detention facilities whenever a department physician or licensed psychologist provides written notice to the court that such detention in the court's facilities would be detrimental to the well-being of the accused. Such alternative detention shall continue only until the date of the accused's trial. Regardless of where the accused is held, the court shall, within 45 days of receiving the department's evaluation:

(A) Consider entry of a nolle prosequi of the charges pursuant to Code Section 17-8-3 and, if the accused is not a child, request that the department petition the probate court of the jurisdiction of the accused's residence for civil commitment of the accused; or

(B) If the court finds that the accused does not meet the criteria for civil commitment, the accused shall be released in accordance with the provisions of Chapter 6 of this title; or

(2) If the accused is charged with a felony, the department shall return the physical custody of the accused to a sheriff of the jurisdiction of the court; provided, however, that as an alternative to returning the accused to the sheriff of the jurisdiction of the court, the department may hold the accused at the department's secure facility instead of at the court's detention facilities whenever a department physician or licensed psychologist provides written notice to the court that such detention in the court's facilities would be detrimental to the well-being of the accused. Such alternative detention shall continue only until the date of the accused's trial. The department shall report to the court its finding regarding the accused's mental competency to stand trial, the reasons therefor, and its opinion as to whether the accused currently meets the criteria for civil commitment. The court may order an independent evaluation of the accused by a court appointed licensed clinical psychologist or psychiatrist, who shall report to the court in writing as to the current mental and emotional condition of the accused. Regardless of where the accused is held, the court shall, within 45 days of receiving the department's evaluation:

(A) Consider entry of a nolle prosequi of the charges pursuant to Code Section 17-8-3 and, if the accused is not a child, request that the department petition the probate court of the jurisdiction of the accused's residence for civil commitment of the accused; or

(B) Retain jurisdiction of the accused and conduct a trial at which the court shall hear evidence and consider all psychiatric and psychological evaluations submitted to the court and determine whether the state has proved by clear and convincing evidence that the accused meets the criteria for civil commitment. The burden of proof in such trials shall be upon the state. Following the trial:

(i) If the court finds that the accused does not meet the criteria for civil commitment, the accused shall be released in accordance with the provisions of Chapter 6 of this title;

(ii) If the court finds that the accused meets the criteria for civil commitment, the judge may issue an order civilly committing the accused, and the court shall order the civil commitment to be on an inpatient or outpatient placement; provided, however, that if the accused is a child, the department shall be authorized to place such child in a secure facility designated by the department;

(iii) If the accused is civilly committed pursuant to division (ii) of this subparagraph and was charged with a nonviolent offense, the court may order civil commitment on an annual basis, but in no case for a period to exceed the maximum period for which the accused could have been sentenced on the most serious nonviolent offense charged or a period to exceed five years, whichever is less, provided that civil commitment shall be reevaluated by a department physician or licensed psychologist on an annual basis;

(iv) If the accused is civilly committed pursuant to division (ii) of this subparagraph and was charged with a violent offense, the court may order civil commitment on an annual basis, but in no case for a period to exceed the maximum period for which the accused could have been sentenced on the most serious violent offense charged, provided that civil commitment shall be reevaluated by a department physician or licensed psychologist on an annual basis;

(v) Following the civil commitment pursuant to division (ii) of this subparagraph, a department physician or licensed psychologist shall submit to the court his or her annual evaluation as to whether the civilly committed accused continues to meet the criteria for civil commitment. The court shall mail the annual evaluation to the attorney for the accused or, if pro se, to the accused and to the prosecuting attorney. The court shall review the case annually and enter the appropriate order to renew the civil commitment, to change the civil commitment status, or, in the event the charges are dismissed, to transfer the jurisdiction of the case to the probate court of the jurisdiction of the accused's residence for further civil commitment; provided, however, that after the department submits its annual evaluation, if the state or the accused requests a hearing regarding civil commitment, the court shall hold a hearing on such issue; and

(vi) An accused who is civilly committed pursuant to division (ii) of this subparagraph may make an application for release from civil commitment but shall only be released from that civil commitment by order of the court in accordance with the procedures specified in paragraphs (1) through (3) of subsection (f) of Code Section 17-7-131, except that the burden of proof in such release hearing shall be on the state, and if the civilly committed accused is indigent, the accused may petition the court to have an evaluation performed by a physician or licensed psychologist of the accused's choice, and the court may order the cost of such evaluation be paid for by the county.

(f) If, at any time, the department's physician or licensed psychologist determines that the accused is mentally incompetent to stand trial but later determines that the accused is mentally competent to stand trial, the court shall be so notified and shall order the accused detained or discharged in accordance with paragraph (1) of subsection (d) of this Code section. Any accused determined by a department physician or licensed psychologist to be mentally competent to stand trial and returned to the court as provided in subsection (d) of this Code section shall again be entitled to file a special plea as provided for in this Code section.

(g) If an accused is determined by a department physician or licensed psychologist to be mentally incompetent to stand trial, whether or not civilly committed pursuant to this Code

section, the state may file at any time a motion for rehearing on the issue of the accused's mental competency to stand trial. If the state's motion is granted, the case shall proceed as provided in this Code section.

(h) Nothing in this Code section shall prevent the accused or the state from seeking a court order for a nondepartment mental competency evaluation of the accused at the cost of the movant. If a nondepartment mental competency evaluation is ordered, the court shall abide by the time frames for trial as set forth in this Code section unless the court determines, for good cause shown, that such time frames require adjustment for a nondepartment evaluation.

(i) The 'Crime Victims' Bill of Rights,' as set forth in Chapter 17 of this title, shall be applicable to any judicial proceeding held pursuant to this Code section, and notice shall be provided to any victim as set forth in such chapter."

SECTION 3.

Said title is further amended in Code Section 17-7-170, relating to demands for speedy trials, by adding a new subsection to read as follows:

"(f) If a defendant files a special plea of incompetency to stand trial pursuant to Code Section 17-7-130 or if the court, pursuant to Code Section 17-7-129, conducts a trial on the competency of the defendant, the period of time during which such matter is pending shall not be included in the computation of determining whether a demand for speedy trial has been satisfied."

SECTION 4.

Said title is further amended in Code Section 17-7-171, relating to the time for demand for speedy trial in capital cases, by adding a new subsection to read as follows:

"(d) If a defendant files a special plea of incompetency to stand trial pursuant to Code Section 17-7-130 or if the court, pursuant to Code Section 17-7-129, conducts a trial on the competency of the defendant, the period of time during which such matter is pending shall not be included in the computation of determining whether a demand for speedy trial has been satisfied."

SECTION 5.

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