

Senate Bill 132

By: Senators Strickland of the 42nd, Kirkpatrick of the 32nd, Watson of the 1st, Jackson of the 41st and Anderson of the 43rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 6 of Chapter 7 of Title 17 of the Official Code of Georgia
2 Annotated, relating to insanity and mental incapacity, so as to require a hearing before a
3 court orders an evaluation of the mental competency of an accused person to stand trial; to
4 provide for the release of reports of such evaluations; to establish different procedures in
5 cases where the subject has been accused only of one or more nonviolent misdemeanor
6 offenses, including automatic dismissal in some cases, subject to exceptions; to provide for
7 such different procedures and such exceptions; to provide for related matters; to provide for
8 an effective date and applicability; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Part 2 of Article 6 of Chapter 7 of Title 17 of the Official Code of Georgia Annotated,
12 relating to insanity and mental incapacity, is amended by revising Code Section 17-7-129,
13 relating to mental capacity to stand trial and release of competency evaluation to prosecuting
14 attorney, as follows:

15 "17-7-129.

16 (a) When information becomes known to the court sufficient to raise a bona fide doubt
17 regarding the accused's mental competency to stand trial, the court has a duty, sua sponte,
18 to inquire into the accused's mental competency to stand trial; provided, however, that if
19 such information is made known to the court by the accused or the attorney for the accused,
20 a hearing as provided for in paragraph (1) of subsection (b) of Code Section 17-7-130 shall
21 be required. The court may order the Department of Behavioral Health and Developmental
22 Disabilities to conduct an evaluation of the accused's competency. ~~If the court determines~~
23 ~~that it is necessary to have a trial on the issue of competency, the court shall follow the~~
24 ~~procedures set forth in Code Section 17-7-130.~~ The court's order shall set forth those facts
25 which give rise to its bona fide doubt as to the accused's mental competency to stand trial.
26 The evaluation of the Department of Behavioral Health and Developmental Disabilities
27 shall be submitted to the court, and the court shall submit such evaluation to the attorney
28 for the accused or, if pro se, to the accused, but otherwise, the report shall remain under
29 seal.

30 (b) ~~If the court orders a competency evaluation and the accused serves notice of a special~~
31 ~~plea of mental incompetency to stand trial or raises the issue of insanity and the court~~
32 ~~orders a competency evaluation, the court shall release the competency evaluation to the~~
33 ~~attorney for the accused or, if pro se, to the accused, and to the prosecuting attorney. Such;~~
34 provided, however, that such evaluation shall not be released to any other person absent a
35 court order.

36 (c) If the court determines that it is necessary to have a trial on the issue of competency,
37 the court shall follow the procedures set forth in Code Section 17-7-130."

38

SECTION 2.

39 Said part is further amended in Code Section 17-7-130, relating to proceedings upon a plea
40 of mental incompetency to stand trial, by revising subsections (b) and (c) as follows:

41 "(b)(1)(A) If an accused files a motion requesting a competency evaluation, the court
42 may, for cause shown upon the hearing of the motion, order the department to conduct
43 an evaluation by a physician or licensed psychologist to determine the accused's mental
44 competency to stand trial ~~and, if such.~~

45 (B) If the physician or licensed psychologist provided for in subparagraph (A) of this
46 paragraph determines the accused to be mentally incompetent to stand trial, the
47 ~~Department of Behavioral Health and Developmental Disabilities~~ department, in its sole
48 discretion, shall determine an appropriate treatment with the capability to restore the
49 accused to competency, which may include inpatient treatment in a secure facility
50 designated by the department or a jail-based competency restoration program. ~~If, and,~~
51 if the accused is a child, the department shall be authorized to place such child in a
52 secure facility designated by the department.

53 (C) The department's evaluation made pursuant to subparagraph (A) of this paragraph
54 shall be submitted to the court, and the court shall submit such evaluation to the
55 attorney for the accused or, if pro se, to the accused, ~~but otherwise;~~ provided, however,
56 that the evaluation shall be under seal and shall not be released to any other person
57 absent a court order.

58 (D) As used in this paragraph, the term 'jail-based competency restoration' means
59 clinical services for competency restoration that are provided in jails to persons found
60 incompetent to stand trial pursuant to mutual agreements entered into between sheriffs
61 and the department to offer such clinical services in jails.

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

67 (c)(1) If the court finds the accused is mentally incompetent to stand trial, the court may
68 order a department physician or licensed psychologist to evaluate and diagnose the
69 accused as to whether there is a substantial probability that the accused will attain mental
70 competency to stand trial in the foreseeable future. The court shall retain jurisdiction
71 over the accused and shall transfer the accused to the physical custody of the department.
72 At its discretion, the court may allow the evaluation to be performed on the accused as
73 an outpatient if the accused is charged with a nonviolent offense.

74 (2) The Such evaluation provided for in paragraph (1) of this subsection shall be
75 performed;

76 (A) Except as provided in subparagraph (B) of this paragraph, within 90 days after the
77 department has received actual custody of an accused or, in the case of an outpatient,
78 a court order requiring evaluation of an accused. If the accused is a child, the
79 department shall be authorized to place such child in a secure facility designated by the
80 department; or

81 (B) If the accused is charged only with one or more nonviolent misdemeanor offenses,
82 within 45 days after the department has received actual custody of an accused or, in the
83 case of an outpatient, a court order requiring evaluation of an accused; provided,
84 however, that the provisions of this subparagraph shall not apply to a misdemeanor
85 charge of driving under the influence of drugs or alcohol in violation of Code
86 Section 40-6-391 or a misdemeanor charge involving an act of domestic violence. If
87 the accused is a child, the department shall be authorized to place such child in a secure
88 facility designated by the department.

89 (3) If the evaluation provided for in paragraph (1) of this subsection shows:

90 (†)(A) That the accused is mentally competent to stand trial, the department shall
91 immediately report that determination and the reasons therefor to the court, and the
92 court shall submit such determination to the attorney for the accused or, if pro se, to the

93 accused and to the prosecuting attorney. The accused shall be returned to the court as
94 provided for in subsection (d) of this Code section;

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

99 ~~(3)(C)~~ That the accused is mentally incompetent to stand trial but there is a substantial
100 probability that the accused will attain competency in the foreseeable future;

101 (i) Except as provided in division (ii) of this subparagraph, by the end of the 90 day
102 period provided for in subparagraph (A) of paragraph (2) of this subsection, or at any
103 prior time, the department shall report that finding and the reasons therefor to the
104 court and shall retain custody over the accused for the purpose of continued treatment
105 for an additional period not to exceed nine months; provided, however, that if the
106 accused is charged with a misdemeanor offense or a nonviolent offense, the court
107 shall retain jurisdiction over the accused but may, in its discretion, allow continued
108 treatment to be done on an outpatient basis by the department.—The and the
109 department shall monitor the accused's outpatient treatment for the additional period
110 not to exceed nine months; or

111 (ii) If the accused is charged only with one or more nonviolent misdemeanor
112 offenses, by the end of the 45 day period provided for in subparagraph (B) of
113 paragraph (2) of this subsection, or at any prior time, the department shall report that
114 finding and the reasons therefor to the court and shall retain custody over the accused
115 for the purpose of continued treatment for an additional period not to exceed 120
116 days; provided, however, that the court shall retain jurisdiction over the accused but
117 may, in its discretion, allow continued treatment to be done on an outpatient basis by
118 the department and the department shall monitor the accused's outpatient treatment
119 for the additional period not to exceed 120 days.

120 (D)(i) If, by the end of the nine-month period provided for in division (i) of
121 subparagraph (C) of this paragraph or at any prior time the accused's condition
122 warrants, the accused is still determined by the department physician or licensed
123 psychologist to be mentally incompetent to stand trial, irrespective of the probability
124 of recovery in the foreseeable future, the department shall report that finding and the
125 reasons therefor to the court. The court shall then follow the procedures in
126 subsection (e) of this Code section for civil commitment or release.

127 (ii) If, by the end of the 120 day period provided for in division (ii) of
128 subparagraph (C) of this paragraph or at any prior time the accused's condition
129 warrants, the accused is still determined by the department physician or licensed
130 psychologist to be mentally incompetent to stand trial, irrespective of the probability
131 of recovery in the foreseeable future, the charges against the accused shall be
132 dismissed and the accused shall be referred to a community service board unless
133 otherwise ordered by the court for cause shown upon the hearing of a motion by the
134 prosecuting attorney."

135 **SECTION 3.**

136 This Act shall become effective on July 1, 2025, and shall apply to any motions made or
137 hearings or trials commenced on or after such date.

138 **SECTION 4.**

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