

The Senate Committee on Judiciary offered the following substitute to SB 132:

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 amend Article 2 of Chapter 1 of Title 37
8 of the Official Code of Georgia Annotated, relating to powers and duties of the Department
9 of Behavioral Health and Developmental Disabilities, so as to provide for the receipt of
10 conviction data; to provide for related matters; to provide for an effective date and
11 applicability; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Part 2 of Article 6 of Chapter 7 of Title 17 of the Official Code of Georgia Annotated,
15 relating to insanity and mental incapacity, is amended by revising Code Section 17-7-129,

16 relating to mental capacity to stand trial and release of competency evaluation to prosecuting
17 attorney, as follows:

18 "17-7-129.

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

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

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

SECTION 2.

41

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

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

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

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

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

65 (2) If the accused files a special plea alleging that the accused is mentally incompetent
66 to stand trial, it shall be the duty of the court to have a bench trial, unless the state or the
67 accused demands a special jury trial, to determine the accused's competency to stand trial.

68 Once a special plea has been filed, the court shall submit the department's evaluation to
69 the attorney for the accused or, if pro se, to the accused and to the prosecuting attorney.

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

77 (2) The ~~Such~~ evaluation provided for in paragraph (1) of this subsection shall be
78 performed:

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

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

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

93 (H)(A) That the accused is mentally competent to stand trial, the department shall
94 immediately report that determination and the reasons therefor to the court, and the

95 court shall submit such determination to the attorney for the accused or, if pro se, to the
96 accused and to the prosecuting attorney. The accused shall be returned to the court as
97 provided for in subsection (d) of this Code section;

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

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

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

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

121 the department and the department shall monitor the accused's outpatient treatment
122 for the additional period not to exceed 120 days.

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

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

138 **SECTION 3.**

139 Article 2 of Chapter 1 of Title 37 of the Official Code of Georgia Annotated, relating to
140 powers and duties of the Department of Behavioral Health and Developmental Disabilities,
141 is amended by revising Code Section 37-1-28, relating to conviction data, as follows:

142 "37-1-28.

143 (a) As used in this Code section, the term 'conviction data' means a record of a finding or
144 verdict of guilty or a plea of guilty or a plea of nolo contendere with regard to any crime,
145 regardless of whether an appeal of the conviction has been sought.

146 (b) The department may receive from any law enforcement agency conviction data that is
147 relevant to a person whom the department or its contractors is considering as a final
148 selectee for employment in a position the duties of which involve direct care, treatment,
149 custodial responsibilities, or any combination thereof for its clients. ~~The department may~~
150 ~~also receive conviction data which is relevant to a person whom the department or its~~
151 ~~contractors is considering as a final selectee for employment in a position if, in the~~
152 ~~judgment of the employer, a final employment decision regarding the selectee can only be~~
153 ~~made by a review of conviction data in relation to the particular duties of the position and~~
154 ~~the security and safety of clients, the general public, or other employees.~~

155 (c) The department may receive from any law enforcement agency conviction data which
156 is relevant to a person whom the department or its contractors is considering as a final
157 selectee for employment in a position if, in the judgment of the employer, a final
158 employment decision regarding the selectee can only be made by a review of conviction
159 data in relation to the particular duties of the position and the security and safety of clients,
160 the general public, or other employees.

161 ~~(c)~~(d) The department shall establish a uniform method of obtaining conviction data under
162 subsection (a) of this Code section which shall be applicable to the department and its
163 contractors. Such uniform method shall require the submission to the Georgia Crime
164 Information Center of fingerprints and the records search fee in accordance with Code
165 Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall
166 promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau
167 records and an appropriate report and shall promptly conduct a search of its own records
168 and records to which it has access. After receiving the fingerprints and fee, the Georgia
169 Crime Information Center shall notify the department in writing of any derogatory finding,
170 including, but not limited to, any conviction data regarding the fingerprint records check
171 or if there is no such finding.

172 ~~(d)~~(e) All conviction data received shall be for the exclusive purpose of making
173 employment decisions or decisions concerning individuals in the care of the department
174 and shall be privileged and shall not be released or otherwise disclosed to any other person
175 or agency. Immediately following the employment decisions or upon receipt of the
176 conviction data, all such conviction data collected by the department or its agent shall be
177 maintained by the department or agent pursuant to laws regarding and the rules or
178 regulations of the Federal Bureau of Investigation and the Georgia Crime Information
179 Center, as is applicable. Penalties for the unauthorized release or disclosure of any
180 conviction data shall be as prescribed pursuant to laws regarding and rules or regulations
181 of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is
182 applicable.

183 ~~(e)~~(f) The department may promulgate written rules and regulations to implement the
184 provisions of this Code section.

185 ~~(f)~~(g) The department shall be authorized to conduct a name or descriptor based check of
186 any person's criminal history information, including arrest and conviction data, and other
187 information from the Georgia Crime Information Center regarding any adult person who
188 provides care or is in contact with persons under the care of the department without the
189 consent of such person and without fingerprint comparison to the fullest extent permissible
190 by federal and state law.

191 ~~(g)~~(h) If the department is participating in the program described in subparagraph (a)(1)(F)
192 of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of
193 Investigation shall be authorized to retain fingerprints obtained pursuant to this Code
194 section for such program and the department shall notify the individual whose fingerprints
195 were taken of the parameters of such retention."

196

SECTION 4.

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

199

SECTION 5.

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