

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

**AS PASSED**

**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.**

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

"(b)(1)(A) If an accused files a motion requesting a competency evaluation, the court shall hold a hearing to determine if there is sufficient information to raise a bona fide doubt regarding the accused's current mental competency to stand trial. The prosecuting attorney may submit information regarding the accused's current mental competency to stand trial. Any evidence presented by the accused, may, upon request by the accused or the attorney for the accused, be ex parte and any evidence submitted by either party shall be filed under seal. The court may, upon cause shown at such hearing, 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,~~ (B) If the physician or licensed psychologist provided for in subparagraph (A) of this paragraph determines the accused to be mentally incompetent to stand trial, the Department of Behavioral Health and Developmental Disabilities department, in its sole discretion, shall determine an appropriate treatment with the capability to restore the accused to competency, which may include inpatient treatment in a secure facility designated by the department or a jail-based competency restoration program. ~~If, and, if the accused is a child, the department shall be authorized to place such child in a secure facility designated by the department.~~

(C) The department's evaluation made pursuant to subparagraph (A) of this paragraph 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,; provided, however,~~ that the evaluation shall be under seal and shall not be released to any other person absent a court order.

(D) As used in this paragraph, the term 'jail-based competency restoration' means clinical services for competency restoration that are provided in jails to persons found

incompetent to stand trial pursuant to mutual agreements entered into between sheriffs and the department to offer such clinical services in jails.

(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)(1) 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.

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

(A) Except as provided in subparagraph (B) of this paragraph, 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; or

(B) If the accused is charged only with one or more nonviolent misdemeanor offenses, within 45 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; provided, however, that the provisions of this subparagraph shall not apply to a misdemeanor charge of driving under the influence of drugs or alcohol in violation of Code Section 40-6-391 or a misdemeanor charge involving an act of domestic violence.

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

~~(1)(A)~~ 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)(B)~~ 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)(C)~~ 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;

(i) Except as provided in division (ii) of this subparagraph, by the end of the 90 day period provided for in subparagraph (A) of paragraph (2) of this subsection, 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 and the department shall monitor the accused's outpatient treatment for the additional period not to exceed nine months; or

(ii) If the accused is charged only with one or more nonviolent misdemeanor offenses, by the end of the 45 day period provided for in subparagraph (B) of paragraph (2) of this subsection, 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 120

days; provided, however, that 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 and the department shall monitor the accused's outpatient treatment for the additional period not to exceed 120 days.

(D)(i) If, by the end of the nine-month period provided for in division (i) of subparagraph (C) of this paragraph 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.

(ii) If, by the end of the 120 day period provided for in division (ii) of subparagraph (C) of this paragraph 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 charges against the accused shall be dismissed as a matter of law by the court and the accused shall be referred to a community service board unless otherwise ordered by the court for cause shown upon the hearing of a motion by the prosecuting attorney."

### **SECTION 3.**

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

145 "37-1-28.

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

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

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

164 ~~(c)~~(d) The department shall establish a uniform method of obtaining conviction data under  
165 subsection (a) of this Code section which shall be applicable to the department and its  
166 contractors. Such uniform method shall require the submission to the Georgia Crime  
167 Information Center of fingerprints and the records search fee in accordance with Code  
168 Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall  
169 promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau  
170 records and an appropriate report and shall promptly conduct a search of its own records  
171 and records to which it has access. After receiving the fingerprints and fee, the Georgia

172 Crime Information Center shall notify the department in writing of any derogatory finding,  
173 including, but not limited to, any conviction data regarding the fingerprint records check  
174 or if there is no such finding.

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

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

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

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



199

**SECTION 4.**

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

202

**SECTION 5.**

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