

The Senate Committee on Public Safety offered the following substitute to SB 99:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 16-11-129 of the Official Code of Georgia Annotated, relating to  
2 weapons carry license, temporary renewal permit, mandamus, and verification of license, so  
3 as to clarify the type of hospitalization as an inpatient in any mental hospital that prohibits  
4 the issuance of a weapons carry license; to amend Code Section 35-3-34 of the Official Code  
5 of Georgia Annotated, relating to disclosure and dissemination of criminal records to private  
6 persons and businesses, resulting responsibility and liability of the Georgia Crime  
7 Information Center, and provision of certain information to the FBI in conjunction with the  
8 National Instant Criminal Background Check System, so as to provide for judicial procedures  
9 for purging a person's involuntary hospitalization information received by the center for the  
10 purpose of the National Instant Criminal Background Check System under certain  
11 circumstances; to change provisions relating to the retention of a person's involuntary  
12 hospitalization information; to amend Title 37 of the Official Code of Georgia Annotated,  
13 relating to mental health, so to require judicial notification to certain persons admitted to  
14 certain facilities of certain firearm prohibitions that attach to such admission; to provide for  
15 retention of jurisdiction; to provide for related matters; to repeal conflicting laws; and for  
16 other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

18 Code Section 16-11-129 of the Official Code of Georgia Annotated, relating to weapons  
19 carry license, temporary renewal permit, mandamus, and verification of license, is amended  
20 by revising subparagraph (b)(2)(J) as follows:  
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22 "(J) Except as provided for in subsection (b.1) of this Code section, any person who has  
23 been involuntarily hospitalized as an inpatient in any mental hospital or alcohol or drug  
24 treatment center within the five years immediately preceding the application. The judge  
25 of the probate court may require any applicant to sign a waiver authorizing any mental  
26 hospital or treatment center to inform the judge whether or not the applicant has been

27 an inpatient in any such facility in the last five years and authorizing the superintendent  
 28 of such facility to make to the judge a recommendation regarding whether the applicant  
 29 is a threat to the safety of others and whether a license to carry a weapon should be  
 30 issued. When such a waiver is required by the judge, the applicant shall pay a fee of  
 31 \$3.00 for reimbursement of the cost of making such a report by the mental health  
 32 hospital, alcohol or drug treatment center, or the Department of Behavioral Health and  
 33 Developmental Disabilities, which the judge shall remit to the hospital, center, or  
 34 department. The judge shall keep any such hospitalization or treatment information  
 35 confidential. It shall be at the discretion of the judge, considering the circumstances  
 36 surrounding the hospitalization and the recommendation of the superintendent of the  
 37 hospital or treatment center where the individual was a patient, to issue the weapons  
 38 carry license or renewal license;"

39 **SECTION 2.**

40 Code Section 35-3-34 of the Official Code of Georgia Annotated, relating to disclosure and  
 41 dissemination of criminal records to private persons and businesses, resulting responsibility  
 42 and liability of the Georgia Crime Information Center, and provision of certain information  
 43 to the FBI in conjunction with the National Instant Criminal Background Check System, is  
 44 amended by revising subsection (e) as follows:

45 "(e)(1) The Georgia Crime Information Center shall be authorized to provide criminal  
 46 history records, wanted person records, and involuntary hospitalization records  
 47 information to the Federal Bureau of Investigation or any successor agency for the sole  
 48 purpose of inclusion in ~~conjunction with~~ the National Instant Criminal Background  
 49 Check System in accordance with the federal Brady Handgun Violence Prevention Act,  
 50 18 U.S.C. Section 921, et seq.; provided, however, that with respect to involuntary  
 51 hospitalization records, the center shall forward only such information as is necessary to  
 52 identify such persons.

53 (2) The records of the ~~Georgia Crime Information Center~~ center shall include  
 54 information as to whether a person has been involuntarily hospitalized. Notwithstanding  
 55 any other provisions of law and in order to carry out the provisions of this Code section  
 56 and Code Section 16-11-172, the ~~Georgia Crime Information Center~~ center shall be  
 57 provided such information and no other mental health information from the involuntary  
 58 hospitalization records of the probate courts concerning persons involuntarily  
 59 hospitalized after March 22, 1995, in a manner agreed upon by ~~the Probate Judges~~  
 60 Training Council and the Georgia Bureau of Investigation The Council of Probate Court  
 61 Judges of Georgia and the bureau to preserve the confidentiality of patients' rights in all  
 62 other respects. Further, notwithstanding any other provisions of law and in order to carry

63 out the provisions of this Code section and Code Section 16-11-172, the center shall be  
 64 provided information as to whether a person has been adjudicated mentally incompetent  
 65 to stand trial or not guilty by reason of insanity at the time of the crime, has been  
 66 involuntarily hospitalized, or both from the records of the clerks of the superior courts  
 67 concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed  
 68 upon by The Council of Superior Court Clerks of Georgia and the ~~Georgia Bureau of~~  
 69 ~~Investigation~~ bureau to preserve the confidentiality of patients' rights in all other respects.

70 (2.1)(A) When a person's mental health information has been submitted pursuant to  
 71 paragraph (2) of this subsection, such person may petition the court in which such  
 72 hospitalization proceedings occurred for relief. A copy of such petition for relief shall  
 73 be served upon the opposing civil party or the prosecuting attorney, as the case may be,  
 74 or their successors, who appeared in the underlying case. Within 60 days of the receipt  
 75 of such petition, such court shall hold a hearing on such petition; provided, however,  
 76 that such time period may be extended for good cause as determined by the court. The  
 77 prosecuting attorney may represent the interests of the state at such hearing.

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

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

82 (ii) The petitioner's mental health and criminal history records, if any. The court  
 83 shall require the petitioner to sign a waiver authorizing the record custodian of any  
 84 hospital where such petitioner received mental health treatment for such  
 85 hospitalization or any other facility or outpatient treatment center where he or she  
 86 received mental health treatment since such hospitalization to release such records to  
 87 the court. The court shall keep such hospitalization and treatment records confidential  
 88 to the extent possible;

89 (iii) The petitioner's reputation, which shall be developed at a minimum through  
 90 character witness statements, testimony, or other character evidence; and

91 (iv) Changes in the petitioner's condition or circumstances since the hospitalization  
 92 relevant to the relief sought.

93 (C)(i) The court shall issue a written order of its decision on such petition filed under  
 94 this paragraph no later than 30 days after the hearing.

95 (ii) The court shall grant such petition if it finds by a preponderance of the evidence  
 96 that the petitioner will not likely act in a manner dangerous to public safety and that  
 97 granting the relief will not be contrary to the public interest.

98 (iii) If the court grants such petition, the clerk of court shall report such order to the  
 99 center immediately, but in no case later than ten days after the date of such order, and

100 the center shall purge and remove such record that is the subject of the order from any  
101 data base in which the center makes available to the National Instant Criminal  
102 Background Check System and notify the United States Attorney General that the  
103 basis for such record being made available no longer is applicable, as soon as  
104 practicable but not later than 30 days after receipt of such order.

105 (iv) No petition for relief may be filed within a period of one year from the date of  
106 the final order on a previous petition for relief.

107 (2.2)(A) After five years have elapsed from the date that a person's involuntary  
108 hospitalization information has been received by the Georgia Crime Information Center  
109 or not purged for an additional five-year period as provided for under this paragraph,  
110 the center shall purge its records of such information as soon as practicable and in any  
111 event purge such records within 30 days after the expiration of such five-year period  
112 provided for in this paragraph.

113 (B) Within 30 days of the expiration of such five-year period, the center shall notify  
114 the court retaining jurisdiction over the case of a person's involuntary hospitalization  
115 of the pending expiration of such five-year period. Within 15 days of the receipt of  
116 such notice, such court retaining jurisdiction shall decide whether, in its discretion  
117 based upon the facts of the underlying case, to hold a hearing to determine whether  
118 public safety and the public interest requires that such person's involuntary  
119 hospitalization information not be purged for an additional five-year period.

120 (C)(i) If the court decides not to hold a hearing, the court shall issue an order of its  
121 decision not to hold a hearing and the clerk of court shall report such order to the  
122 center immediately, but in no case later than ten days after the date of such decision,  
123 and the center shall purge and remove such record that is the subject of the order from  
124 any data base in which the center makes available to the National Instant Criminal  
125 Background Check System and notify the United States Attorney General that the  
126 basis for such record being made available is no longer applicable, as soon as  
127 practicable but not later than 30 days after receipt of such order.

128 (ii) If the court decides to hold a hearing, the court shall issue a notice of hearing to  
129 the person whose involuntary hospitalization records are the subject of such hearing  
130 and the opposing civil party or the prosecuting attorney, as the case may be, or their  
131 successors, who appeared in the underlying case. The court shall hold such hearing  
132 within 30 days of its decision to hold a hearing; provided, however, that in its  
133 discretion the court may extend the time for the holding of such hearing for good  
134 cause. The provisions of subparagraphs (D) and (E) shall apply to such hearing.

135 (D) At the hearing provided for under this paragraph, the court shall receive and  
136 consider evidence concerning:

137 (i) The circumstances which caused the person's hospitalization and regarding  
138 firearm disabilities from which relief is sought;

139 (ii) The person's mental health and criminal history records, if any. The court shall  
140 require the person to sign a waiver authorizing the record custodian of any hospital  
141 where such person received mental health treatment for such hospitalization or any  
142 other facility or outpatient treatment center where he or she received mental health  
143 treatment since such hospitalization to release such records to the court. The court  
144 shall keep such hospitalization and treatment records confidential to the extent  
145 possible;

146 (iii) The person's reputation, which shall be developed at a minimum through  
147 character witness statements, testimony, or other character evidence; and

148 (iv) Changes in the person's condition or circumstances since the hospitalization  
149 relevant to the relief sought.

150 (E)(i) The court shall issue a written order of its decision on such petition filed under  
151 this paragraph no later than 30 days after the hearing.

152 (ii) If the court does not find by clear and convincing evidence that the person will  
153 likely act in a manner dangerous to public safety and that purging such records will  
154 not be contrary to the public interest, it shall order that such person's involuntary  
155 hospitalization information be purged. The clerk of court shall then report such order  
156 to the center immediately, but in no case later than ten days after the date of such  
157 order, and the center shall purge and remove such record that is the subject of the  
158 order from any data base in which the center makes available to the National Instant  
159 Criminal Background Check System and notify the United States Attorney General  
160 that the basis for such record being made available no longer is applicable, as soon as  
161 practicable but not later than 30 days after receipt of such order. Otherwise, the court  
162 shall order that the person's involuntary hospitalization not be purged for an additional  
163 five-year period; provided, however, that during such additional five-year period the  
164 person may petition pursuant to paragraph (2.1) of this subsection.

165 (2.3)(A) A record shall be kept of hearings conducted pursuant to paragraphs (2.1) and  
166 (2.2) of this subsection. Such record shall be exempt from disclosure under Article 4  
167 of Chapter 18 of Title 50.

168 (B) Any appeal of the court's ruling filed pursuant to paragraphs (2.1) and (2.2) of this  
169 subsection shall be as provided for by the laws governing the appeal of decisions from  
170 such court; provided, however, that notwithstanding Code Section 5-3-2, any such  
171 appeal from a probate court, as defined in Code Section 15-9-120, shall be by de novo  
172 investigation to the superior court.

173 (C) Information received by a prosecuting attorney pursuant to paragraph (2.1) or (2.2)  
 174 of this subsection shall not be used against the person who is the subject of the petition  
 175 in any other case or context unless such information is obtained in such other case or  
 176 context by other rules of evidence or discovery.

177 (3)(A) The records of the center shall include information as to whether a person has  
 178 been involuntarily hospitalized. In order to carry out the provisions of Code Section  
 179 16-11-129, the center shall be provided such information and no other mental health  
 180 information from the records of the probate and superior courts ordering persons to be  
 181 involuntarily hospitalized. With respect to probate court records, such information shall  
 182 be provided in a manner agreed upon by the Probate Judges Training Council and the  
 183 bureau. With respect to superior court records, such information shall be provided in  
 184 a manner agreed upon by The Council of Superior Court Clerks of Georgia and the  
 185 bureau. Such records shall be provided in a manner so as to preserve the confidentiality  
 186 of patients' rights in all other respects.

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

193 **SECTION 3.**

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

199 "(b) After a full and fair hearing or, if the hearing is waived, after a full review of the  
 200 evidence, if the court is satisfied that immediate evaluation is necessary, the court shall  
 201 issue an order to any peace officer to deliver the patient forthwith to the evaluating facility  
 202 designated by the department to admit persons ordered by that court to be evaluated. The  
 203 court shall provide notification to any person admitted to a facility under this Code section  
 204 of the prohibitions pursuant to 18 U.S.C. Section 922(d)(4) and (g)(4) that attach to such  
 205 admission. The court shall retain jurisdiction of the case for purposes of Code Section  
 206 35-3-34."

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**SECTION 4.**

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

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

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**SECTION 5.**

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