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MENTAL HEALTH

Examination, Treatment, etc., for Mental Illness: Provide for Treatment Team to Concur on Decision to Discharge Mental Patients and for Period of Conditional Release of Mentally Ill Defendants

CODE SECTIONS: O.C.G.A. §§ 17-7-131 (amended), 37-1-1 (amended), 37-1-24 (new), 37-2-11.2 (new), 37-3-1, -21, -22, -24, -43, -61, -64, -81, -81.1 to -83, -85, -93, -94, -162, -166, -168 (amended), 37-4-6, -122, -125 (amended), 37-7-1, -21, -22, -24, -43, -61, -64, -81 to -83, -85, -93 to -94, -162, -166, -168 (amended)

BILL NUMBERS: HB 469, HB 889

ACT NUMBERS: 378, 451

SUMMARY: HB 889 amends Title 37 of the Georgia Code by changing several provisions relating to administration of mental health laws. The most significant changes include providing the Department of Human Resources with access to patient records, changing the duties of the chief medical officer, allowing chief medical officers to appoint designees, changing the provision regarding patient discharge, and allowing psychologists to perform functions traditionally performed by physicians. Other minor changes include providing for confidentiality of records and providing patients with the ability to seek treatment from private psychologists. HB 469 provides the court with authority to authorize a period of conditional release for mental patients who plead insanity or mental incompetency. During this period of conditional release, the court monitors the defendant's progress in society and has the authority to revoke the conditional release period if warranted.

EFFECTIVE DATES: April 12, 1991, O.C.G.A. §§ 37-2-11.2, 37-3-21, -85, 37-7-21, -85; July 1, 1991, all other sections

History

There were two motivating factors behind introducing this type of legislation in 1991: the Brady shooting, and the case of *Peeks v. Georgia Department of Human Resources*.¹ The Brady incident involved James Calvin Brady, a mental patient discharged from Georgia Regional Hospital.² The day after his release, Brady opened fire in Perimeter Mall, killing one person and wounding four others.³ In *Peeks*, the family of John W. Peeks filed a wrongful death action against the Department of Human Resources, Northwest Georgia Regional Hospital, and three hospital employees, the clinical director, a staff psychiatrist, and a hospital social worker.⁴ Mr. Peeks was killed by David Crawford, a former patient of the hospital.⁵ Crawford killed Peeks three weeks after his release; Crawford was released by a doctor who was assigned to carry out the responsibilities of the hospital's clinical director while the director was away.⁶ The appellants claimed that the hospital workers owed a duty of reasonable care to exercise control over Crawford to prevent him from harming others.⁷

To address issues concerning the release of mental patients that were raised by the actions of Brady and Crawford shortly after their release from state mental facilities, the most prominent of these issues being the lack of bed space and staff to adequately treat the State's mental patients, the Georgia Department of Human Resources appointed the Forensic Task Force.⁸ The Task Force recommended legislative changes that would give more professionals a voice in the discharge decision and would give the courts power to monitor the patients on a period of conditional release.⁹

HB 889

HB 889 originally only addressed access to records by the Department of Human Resources, the reproduction and confidentiality of these

1. Telephone Interview with Rep. Jim Martin, House District No. 26 (Apr. 5, 1991) [hereinafter Martin Interview]. Rep. Martin cosponsored HB 889 with Rep. Charles Thomas, House District No. 69.

2. Hal Straus and Katie Long, *Medical Papers in James Brady's Pocket: "The patient was homicidal."* ATLANTA J. & CONST., Apr. 25, 1990, at A1. See also, Katie Long and Bill Rankin, *Mall Shooter Was Seeking 'to Get Even'*, ATLANTA J. & CONST., Apr. 25, 1990, at A1.

3. *Id.*

4. *Peeks v. Dept. of Human Resources*, 396 S.E.2d 511 (Ga. Ct. App. 1990).

5. *Id.* at 512.

6. *Id.*

7. *Id.*

8. Telephone Interview with Rep. Charles Thomas, House District No. 69 (Mar. 26, 1991) [hereinafter Thomas Interview]. Thomas was a sponsor of HB 889 and HB 469.

9. *Id.*

records, the powers of the chief medical officer, the designees for the chief medical officer, and the provisions relating to patient discharge.¹⁰ The Act is much more comprehensive. The Act passed the Senate with a committee amendment and a floor amendment that added provisions to allow psychologists to perform certain acts which physicians perform in the treatment of the mentally ill and to change the composition and quorum requirements of certain mental health committees.¹¹

The purpose of the Act is to provide for the treatment team approach to evaluating mental patients for discharge.¹² The chief medical officer traditionally made this decision alone; the new approach involves more people, many of whom have daily contact with the patient and have been familiar with the patient since the beginning of her hospitalization period.¹³ The goal of the treatment team approach is to reach a more informed, objective discharge decision.¹⁴ The disadvantage of the team approach may be an increased length of time to reach a discharge decision because of the involvement of many team members.¹⁵ By allowing the Department of Human Resources access to records and allowing psychologists as well as physicians to join in discharge decisions, the Act further broadens the scope of the workers involved in making a discharge decision.¹⁶ The Act provides the chief medical officer with the power to designate in writing another physician who may make discharge decisions.¹⁷ If the designee and the treatment team agree on the discharge decision, the designee has the final authority to act on the decision.¹⁸ However, if the designee and the treatment team do not concur on the discharge decision, the issue goes to the chief medical officer for final determination.¹⁹

10. HB 889, as introduced, 1991 Ga. Gen. Assem.

11. O.C.G.A. §§ 37-3-20, -22, -24, -43, -61, -64, -81 to -81.1, -82 to -83, -93 to -94, -61, -166, -168, 37-4-6, -125, 37-7-1, -22, -24, -43, -61, -64, -81 to -83, -93 to -94, -162, -166, -168 (Supp. 1991).

These amendments were added by the Senate Special Judiciary Committee and the Senate when it appeared that HB 408 was stalled. HB 408, like HB 889, contained provisions changing the administration of mental health laws, but several of these changes were found controversial. When it became obvious that HB 408 was not going to pass during the present session, HB 889 was then amended to include all the noncontroversial provisions of HB 408: those changing "physician" to "physician or psychologist" and those changing the composition of the treatment review committees and their quorum requirements. Martin Interview, *supra* note 1.

12. Thomas Interview, *supra* note 8.

13. *Id.*

14. Telephone Interview with Sen. Chuck Clay, Senate District No. 37 (Apr. 8, 1991) [hereinafter Clay Interview]. Sen. Clay is a member of the Forensic Task Force.

15. Martin Interview, *supra* note 1.

16. O.C.G.A. § 37-2-11.2 (Supp. 1991).

17. O.C.G.A. § 37-3-21 (Supp. 1991).

18. *Id.*

19. *Id.*

The Act mandates that the chief medical officer of each state hospital shall establish a Committee for Continued Involuntary Review.²⁰ This committee shall consist of five professionals, at least one being a physician and at least two being either physicians or psychologists.²¹ The committee can conduct meetings with a quorum of three members, provided that at least one of the members present is a physician.²² The function of this committee is to review each patient's treatment plan and determine the patient's need for continued involuntary treatment.²³ The committee then reports its findings to the chief medical officer who will, along with the treatment team, consider them in making the discharge decision.²⁴ No person involved in the daily care and treatment of a patient can be a member of any committee reviewing such individual's case for continued involuntary treatment.²⁵ This would seriously impede the committee's goal of reaching an objective view.²⁶

The goal of the Act is to involve more professionals in the discharge review process and to implement the treatment team approach to discharge decisions, thus allowing for a more enlightened decision concerning the issue of a patient's release than the chief medical officer alone might reach.²⁷

HB 469

The Act's primary purpose is to give courts some control over defendants who plead insanity or mental incompetency.²⁸ This control would be exercised through a period of conditional release where a community service provider would work in conjunction with the Department of Human Resources to monitor the defendant's progress and report their findings to the court.²⁹ The Act provides the court with the power to revoke this period of conditional release if the defendant does not successfully meet all the requirements of the conditional release period, thereby imposing additional requirements on the defendant while continuing the period of conditional release or returning the defendant to a state hospital for inpatient services.³⁰ If a defendant successfully completes her period of conditional release, she

20. O.C.G.A. § 37-3-83 (Supp. 1991).

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. Thomas Interview, *supra* note 8.

27. Clay Interview, *supra* note 14.

28. Thomas Interview, *supra* note 8.

29. *Id.* This period of conditional release is analagous to a probationary period for criminals.

30. O.C.G.A. § 17-7-131(e)(5) (Supp. 1991).

shall be discharged.³¹ The defendant has the right to request a review by the court of any decisions made regarding the conditional release.³² The Department of Human Resources will not be held civilly or criminally liable for any acts committed by a defendant during her period of conditional release.³³

A patient who is found to qualify for inpatient commitment must be committed to the Department of Human Resources to receive treatment.³⁴ As to the issues of the shortage of bed space in hospitals for these patients, the Task Force found that many patients who no longer meet the criteria for inpatient civil commitment were remaining in the state hospitals, occupying valuable bed space simply because no one, including the patient herself, had requested a release hearing.³⁵ To alleviate this problem, the Act gives the Department of Human Resources the independent right to request a release hearing for any defendant who, in the opinion of the Department, no longer meets the standards for inpatient civil commitment.³⁶

The Senate Judiciary Committee's only change to the bill was a modification to the jury charge contained in the bill.³⁷ This must be read in all cases where a plea of insanity or mental incompetency at the time of the crime has been entered.³⁸ The Committee believed that this new charge gives the jury a more accurate portrayal of the defendant's fate and the safeguards in place to protect society from the release of a potentially dangerous defendant.³⁹

The sponsors' intention in formulating the safeguards implemented by HB 889 and HB 469 was that incidents such as the Brady shooting and the events of the *Peeks* case will never again take place.⁴⁰

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31. O.C.G.A. § 17-7-131(e)(5)(B) (Supp. 1991).

32. O.C.G.A. § 17-7-131(e)(5)(D) (Supp. 1991). The court referred to in the statute is the court that ordered the defendant committed to a state facility because of her plea.

33. O.C.G.A. § 17-7-131(e)(5)(E) (Supp. 1991).

34. O.C.G.A. § 17-7-131(e)(4) (Supp. 1991).

35. Thomas Interview, *supra* note 8.

36. O.C.G.A. § 17-7-131(f)(3) (Supp. 1991).

37. Thomas Interview, *supra* note 8. HB 469 (SCS), 1991 Ga. Gen. Assem.

38. The Committee changed the jury charge from "this court will maintain custody and control of the defendant until ... [he] is not a danger to himself or others ..." to "defendant will be committed to a state mental health facility until such time, if ever, that the court is satisfied that he should be released ..." HB 469 (SCS), 1991 Ga. Gen. Assem.

39. Thomas Interview, *supra* note 8.

40. Clay Interview, *supra* note 14.