

House Bill 442

By: Representative Buckner of the 137th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 35-3-34 of the Official Code of Georgia Annotated, relating to
2 disclosure and dissemination of criminal records to private persons and businesses, resulting
3 responsibility and liability of the Georgia Crime Information Center, and provision of certain
4 information to the FBI in conjunction with the National Instant Criminal Background Check
5 System, so as to provide for a judicial procedure for purging a person's involuntary
6 hospitalization information received by the center for the purpose of the National Instant
7 Criminal Background Check System under certain circumstances; to change provisions
8 relating to the retention of a person's involuntary hospitalization information; to provide for
9 related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Code Section 35-3-34 of the Official Code of Georgia Annotated, relating to disclosure and
13 dissemination of criminal records to private persons and businesses, resulting responsibility
14 and liability of the Georgia Crime Information Center, and provision of certain information
15 to the FBI in conjunction with the National Instant Criminal Background Check System, is
16 amended by revising paragraph (2) of subsection (e) as follows:

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17 ~~“(2)(A) The records of the Georgia Crime Information Center~~ center shall include
18 information as to whether a person has been involuntarily hospitalized.
19 Notwithstanding any other provisions of law and in order to carry out the provisions of
20 this Code section and Code Section 16-11-172, ~~the Georgia Crime Information Center~~
21 center shall be provided such information and no other mental health information from
22 the involuntary hospitalization records of the probate courts concerning persons
23 involuntarily hospitalized after March 22, 1995, in a manner agreed upon by ~~the~~
24 ~~Probate Judges Training Council and the Georgia Bureau of Investigation~~ The Council
25 of Probate Court Judges of Georgia and the bureau to preserve the confidentiality of
26 patients' rights in all other respects. Further, notwithstanding any other provisions of
27 law and in order to carry out the provisions of this Code section and Code Section
28 16-11-172, the center shall be provided information as to whether a person has been
29 adjudicated mentally incompetent to stand trial or not guilty by reason of insanity at the
30 time of the crime, has been involuntarily hospitalized, or both, from the records of the
31 clerks of the superior courts concerning persons involuntarily hospitalized after March
32 22, 1995, in a manner agreed upon by The Council of Superior Court Clerks of Georgia
33 and the ~~Georgia Bureau of Investigation~~ bureau to preserve the confidentiality of
34 patients' rights in all other respects. ~~After five years have elapsed from the date that a~~
35 ~~person's involuntary hospitalization information has been received by the Georgia~~
36 ~~Crime Information Center, the center shall purge its records of such information as soon~~
37 ~~as practicable and in any event purge such records within 30 days after the expiration~~
38 ~~of such five-year period.~~

39 (B) When a person's mental health information has been submitted pursuant to
40 subparagraph (A) of this paragraph, such person may petition the court in which such
41 hospitalization proceedings occurred for relief. A copy of such petition for relief shall
42 be served upon the opposing civil party or the prosecuting attorney, as the case may be,
43 or their successors, who appeared in the underlying case. Within 60 days of the receipt

44 of such petition, such court shall hold a hearing on such petition; provided, however,
45 that such time period may be extended for good cause as determined by the court. The
46 prosecuting attorney may represent the interests of the state at such hearing.

47 (C) At the hearing provided for under subparagraph (B) of this paragraph, the court
48 shall receive and consider evidence concerning:

49 (i) The circumstances which caused the petitioner's hospitalization;

50 (ii) The petitioner's mental health and criminal history records, if any. The court
51 shall require the petitioner to sign a waiver authorizing the record custodian of any
52 hospital where such petitioner received mental health treatment for such
53 hospitalization or any other facility or outpatient treatment center where he or she
54 received mental health treatment since such hospitalization to release such records to
55 the court. The court shall keep such hospitalization and treatment records confidential
56 to the extent possible;

57 (iii) The petitioner's reputation, which shall be established through character witness
58 statements, testimony, or other character evidence; and

59 (iv) Changes in the petitioner's condition or circumstances since such hospitalization.

60 (D)(i) The court shall issue a written order of its decision on such petition filed under
61 subparagraph (B) of this paragraph no later than 30 days after the hearing.

62 (ii) The court shall grant such petition if it finds by a preponderance of the evidence
63 that the petitioner will not likely act in a manner dangerous to himself or herself or
64 public safety and that granting the relief is otherwise consistent with the standards for
65 the issuance of a weapons carry license as provided for in subsection (b.1) of Code
66 Section 16-11-129.

67 (iii) A record shall be kept of the hearing on a petition for relief. Such record shall
68 be exempt from disclosure under Article 4 of Chapter 18 of Title 50.

69 (iv) Any appeal of the court's ruling on such petition shall be as provided for by the
70 laws governing the appeal of decisions from such court; provided, however, that any

71 such appeal from a probate court, as defined in Code Section 15-9-120, shall be by
72 de novo investigation to the superior court, notwithstanding Code Sections 5-3-4 and
73 5-3-5 and paragraph (2) of subsection (a) of Code Section 5-6-33.

74 (v) If the court grants such petition, the clerk of court shall report such order to the
75 center immediately, but in no case later than ten days after the date of such order, and
76 the center shall purge such record that is the subject of the order as soon as practicable
77 but not later than 30 days after receipt of such order.

78 (E) In the case of a person who is involuntarily hospitalized, such person shall not be
79 entitled to petition for relief prior to being discharged from such hospitalization. A
80 person's first petition for relief may be filed only after the expiration of 12 months from
81 the date of such person's discharge from involuntary hospitalization. No petition for
82 relief may be filed within a period of two years from the date of the final order on a
83 previous petition for relief.

84 (F) Information received by a prosecuting attorney pursuant to this paragraph shall not
85 be used against the petitioner in any other case or context unless such information is
86 obtained in such other case or context by other rules of evidence or discovery."

87 **SECTION 2.**

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