

1 of 18 DOCUMENTS

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\*\*\* Current Through the 2007 Regular Session \*\*\*  
\*\*\* Annotations Current Through May 25, 2007 \*\*\*

TITLE 37. MENTAL HEALTH  
CHAPTER 3. EXAMINATION, TREATMENT, ETC., FOR MENTAL ILLNESS  
ARTICLE 1. GENERAL PROVISIONS

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*O.C.G.A. § 37-3-1 (2007)*

§ 37-3-1. Definitions

As used in this chapter, the term:

(1) "Available outpatient treatment" means outpatient treatment, either public or private, available in the patient's community, including but not limited to supervision and support of the patient by family, friends, or other responsible persons in that community. Outpatient treatment at state expense shall be available only within the limits of state funds specifically appropriated therefor.

(1) "Chief medical officer" means the physician with overall responsibility for patient treatment at any facility receiving patients under this chapter or a physician appointed in writing as the designee of such chief medical officer.

(2) "Clinical record" means a written record pertaining to an individual patient and shall include all medical records, progress notes, charts, admission and discharge data, and all other information which is recorded by a facility or other entities responsible for a patient's care and treatment under this chapter and which pertains to the patient's hospitalization and treatment. Such other information as may be required by rules and regulations of the board shall also be included.

(3) "Community mental health center" means an organized program for the care and treatment of the mentally ill operated by a community service board or other appropriate public provider.

(4) "Court" means:

(A) In the case of an individual who is 17 years of age or older, the probate court of the county of residence of the patient or the county in which such patient is found. Notwithstanding *Code Section 15-9-13*, in any case in which the judge of such court is unable to hear a case brought under this chapter within the time required for such hearing or is unavailable to issue the order specified in subsection (b) of *Code Section 37-3-41*, such judge shall appoint a person to serve and exercise all the jurisdiction of the probate court in such case. Any person so appointed shall be a member of the State Bar of Georgia and shall be otherwise qualified for his duties by training and experience. Such appointment may be made on a case-by-case basis or by making a standing appointment of one or more persons. Any person receiving such standing appointment shall serve at the pleasure of the judge making the appointment or his successor in office to hear such cases if and when necessary. The compensation of a person so appointed shall be as agreed upon by the judge who makes the appointment and the person appointed with the approval of the governing authority of the county for which such person is appointed and shall be paid from the county funds of said county. All fees collected for the services of such appointed person shall be paid into the general funds of the county served; or

(B) In the case of an individual who is under the age of 17 years, the juvenile court of the county of residence of the patient or the county in which such patient is found.

## O.C.G.A. § 37-3-1

(5) "Emergency receiving facility" means a facility designated by the department to receive patients under emergency conditions as provided in Part 1 of Article 3 of this chapter.

(6) "Evaluating facility" means a facility designated by the department to receive patients for psychiatric evaluation as provided in Part 2 of Article 3 of this chapter.

(7) "Facility" means any state owned or state operated hospital, community mental health center, or other facility utilized for the diagnosis, care, treatment, or hospitalization of persons who are mentally ill; any facility operated or utilized for such purpose by the United States Department of Veterans Affairs or other federal agency; and any other hospital or facility within the State of Georgia approved for such purpose by the department.

(8) "Full and fair hearing" or "hearing" means a proceeding before a hearing examiner under *Code Section 37-3-83* or *Code Section 37-3-93* or before a court as defined in paragraph (4) of this Code section. The hearing may be held in a regular courtroom or in an informal setting, in the discretion of the hearing examiner or the court, but the hearing shall be recorded electronically or by a qualified court reporter. The patient shall be provided with effective assistance of counsel. If the patient cannot afford counsel, the court shall appoint counsel for him or the hearing examiner shall have the court appoint such counsel; provided, however, that the patient shall have the right to refuse in writing the appointment of counsel, in the discretion of the hearing examiner or the court. The patient shall have the right to confront and cross-examine witnesses and to offer evidence. The patient shall have the right to subpoena witnesses and to require testimony before the hearing examiner or in court in person or by deposition from any physician upon whose evaluation the decision of the hearing examiner or the court may rest. The patient shall have the right to obtain a continuance for any reasonable time for good cause shown. The hearing examiner and the court shall apply the rules of evidence applicable in civil cases. The burden of proof shall be upon the party seeking treatment of the patient. The standard of proof shall be by clear and convincing evidence. At the request of the patient, the public may be excluded from the hearing. The patient may waive his right to be present at the hearing, in the discretion of the hearing examiner or the court. The reason for the action of the court or hearing examiner in excluding the public or permitting the hearing to proceed in the patient's absence shall be reflected in the record.

(9) "Individualized service plan" means a proposal developed during a patient's stay in a facility and which is specifically tailored to the individual patient's treatment needs. Each plan shall clearly include the following:

(A) A statement of treatment goals or objectives, based upon and related to a proper evaluation, which can be reasonably achieved within a designated time interval;

(B) Treatment methods and procedures to be used to obtain these goals, which methods and procedures are related to these goals and which include a specific prognosis for achieving these goals;

(C) Identification of the types of professional personnel who will carry out the treatment and procedures, including appropriate medical or other professional involvement by a physician or other health professional properly qualified to fulfill legal requirements mandated under state and federal law;

(D) Documentation of patient involvement and, if applicable, the patient's accordance with the service plan; and

(E) A statement attesting that the chief medical officer has made a reasonable effort to meet the plan's individualized treatment goals in the least restrictive environment possible closest to the patient's home community.

(9.1) "Inpatient" means a person who is mentally ill and:

(A)(i) Who presents a substantial risk of imminent harm to that person or others, as manifested by either recent overt acts or recent expressed threats of violence which present a probability of physical injury to that person or other persons; or

(ii) Who is so unable to care for that person's own physical health and safety as to create an imminently life-endangering crisis; and

(B) Who is in need of involuntary inpatient treatment.

(9.2) "Inpatient treatment" or "hospitalization" means a program of treatment for mental illness within a hospital facility setting.

(9.3) "Involuntary treatment" means inpatient or outpatient treatment which a patient is required to obtain pursuant to this chapter.

(10) "Least restrictive alternative," "least restrictive environment," or "least restrictive appropriate care and treatment" means that which is the least restrictive available alternative, environment, or care and treatment, respectively, within the limits of state funds specifically appropriated therefor.

(11) "Mentally ill" means having a disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(12) "Mentally ill person requiring involuntary treatment" means a person who is an inpatient or an outpatient.

(12.1) "Outpatient" means a person who is mentally ill and:

(A) Who is not an inpatient but who, based on the person's treatment history or current mental status, will require outpatient treatment in order to avoid predictably and imminently becoming an inpatient;

(B) Who because of the person's current mental status, mental history, or nature of the person's mental illness is unable voluntarily to seek or comply with outpatient treatment; and

(C) Who is in need of involuntary treatment.

(12.2) "Outpatient treatment" means a program of treatment for mental illness outside a hospital facility setting which includes, without being limited to, medication and prescription monitoring, individual or group therapy, day or partial programming activities, case management services, and other services to alleviate or treat the patient's mental illness so as to maintain the patient's semi-independent functioning and to prevent the patient's becoming an inpatient.

(13) "Patient" means any mentally ill person who seeks treatment under this chapter or any person for whom such treatment is sought.

(14) "Private facility" means any hospital facility that is a proprietary hospital or a hospital operated by a non-profit corporation or association approved for the purposes of this chapter, as provided herein, or any hospital facility operated by a hospital authority created pursuant to the "Hospital Authorities Law," Article 4 of Chapter 7 of Title 31.

(14.1) "Psychologist" means a licensed psychologist who meets the criteria of training and experience as a health service provider psychologist as provided in *Code Section 31-7-162*.

(14.2) "Regional state hospital administrator" means the chief administrative officer of a state owned or state operated hospital and the state owned or operated community programs in a region. The regional state hospital administrator, under the supervision of the regional coordinator, has overall management responsibility for the regional state hospital and manages services provided by employees of the regional state hospital and employees of state owned or operated community programs within a mental health, developmental disabilities, and addictive diseases region established in accordance with *Code Section 37-2-3*.

(15) "Representatives" means the persons appointed as provided in *Code Section 37-3-147* to receive notice of the proceedings for voluntary or involuntary treatment.

(16) "Superintendent" means the chief administrative officer who has overall management responsibility at any facility receiving patients under this chapter, other than a regional state hospital or state owned or operated community program, or an individual appointed as the designee of such superintendent.

(16.1) "Traumatic brain injury" means a traumatic insult to the brain and its related parts resulting in organic damage thereto which may cause physical, intellectual, emotional, social, or vocational changes in a person. It shall also be recognized that a person having a traumatic brain injury may have organic damage or physical or social disorders, but for the purposes of this chapter, traumatic brain injury shall not be considered mental illness as defined in paragraph (11) of this Code section.

(17) "Treatment" means care, diagnostic and therapeutic services, including the administration of drugs, and any other service for the treatment of an individual.

(18) "Treatment facility" means a facility designated by the department to receive patients for psychiatric treatment as provided in *Code Sections 37-3-80* through *37-3-84*.

**HISTORY:** Ga. L. 1958, p. 697, § 1; Ga. L. 1960, p. 837, § 1; Code 1933, § 88-501, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1; Ga. L. 1979, p. 723, §§ 1-3; Ga. L. 1982, p. 3, § 37; Ga. L. 1986,

## O.C.G.A. § 37-3-1

p. 1098, § 1; Ga. L. 1989, p. 1566, § 3; Ga. L. 1990, p. 45, § 1; Ga. L. 1991, p. 1059, § 8; Ga. L. 1992, p. 1902, § 1; Ga. L. 1993, p. 1445, § 17.1; Ga. L. 2002, p. 1324, §§ 1-9, 1-10.

**NOTES:**

THE 1993 AMENDMENT, effective July 1, 1994, in paragraph (3), substituted "community service board or other appropriate public provider" for "county board of health or a similar program recognized by a county board of health or the Department of Human Resources".

THE 2002 AMENDMENT, effective July 1, 2002, added paragraph (14.2) and inserted ", other than a regional state hospital or state owned or operated community program," in paragraph (16).

EDITOR'S NOTES. --Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

LAW REVIEWS. --For comment, "1986 Amendments to Georgia's Mental Health Statutes: The Latest Attempt to Provide a Solution to the Problem of the Chronically Mentally Ill," see *36 Emory L.J. 1313 (1987)*.

**JUDICIAL DECISIONS**

INSANE AND MENTALLY ILL SYNONYMOUS. --A person who is insane, i.e., who is not legally responsible for his own actions because he cannot distinguish between right and wrong, is mentally ill under this definition. *Clark v. State, 151 Ga. App. 853, 261 S.E.2d 764 (1979)*, *aff'd, 245 Ga. 629, 266 S.E.2d 466 (1980)*.

PSYCHIATRIST HAS "NO CONTROL" OVER A VOLUNTARY OUTPATIENT. --Where the patient was a voluntary outpatient, the psychiatrist had no control of her in the sense that he could claim legal authority to confine or restrain her against her will unless she met the criteria for involuntary commitment set forth in this section and the patient had not acquiesced in the treatment plan prescribed by the psychiatrist, the psychiatrist could not have unilaterally imposed the treatment plan upon her except in the most extraordinary circumstances. *Ermutlu v. McCorkle, 203 Ga. App. 335, 416 S.E.2d 792, cert. denied, 203 Ga. App. 906, 416 S.E.2d 792 (1992)*.

FACTS SUFFICIENT TO SUSTAIN CRITERIA FOR CIVIL COMMITMENT. --Where the physician's testimony in a release hearing shows only that defendant did not engage in aggressive, psychotic behavior and was not mentally ill during his stay at the hospital while in a structured environment, and in view of defendant's medical history, the history of his functioning in society, and the history of the case, all of which are facts which the trial court is authorized to consider, the court was authorized to find that the criteria for civil commitment had been met. *Pitts v. State, 151 Ga. App. 691, 261 S.E.2d 435 (1979)*.

DISTINCTION BETWEEN ELIGIBILITY FOR GUARDIAN AND FOR BECOMING AN INMATE. --A person may be eligible to have a guardian and may not be eligible to become an inmate of Milledgeville (now Central) State Hospital or continue as such. *Tucker v. American Sur. Co., 78 Ga. App. 327, 50 S.E.2d 859 (1948)*.

ACTS ADMITTED BY INSANITY PLEA SUFFICIENT TO SUSTAIN CRITERIA FOR CIVIL COMMITMENT. --The acts admitted by a plea of not guilty by reason of insanity establish that the defendant meets the criteria for civil commitment. Once that condition has been established, it is presumed to continue at the time of an application for re-

## O.C.G.A. § 37-3-1

lease. *Moses v. State*, 167 Ga. App. 556, 307 S.E.2d 35 (1983), overruled on other grounds, *Nagel v. State*, 262 Ga. 888, 427 S.E.2d 490 (1993).

**PROBATE COURT FINDING OF MENTALLY ILL NEGATES PRESUMPTION OF SANITY.** --An order of the Probate Court finding one a "mentally ill person requiring involuntary treatment" cancels a previously existing presumption of sanity and raises a rebuttable presumption of insanity. *Butler v. State*, 252 Ga. 135, 311 S.E.2d 473 (1984), aff'd, 258 Ga. 344, 369 S.E.2d 252 (1988).

**TREATMENT OUTSIDE CONFINES OF FACILITY.** --A committing court has the authority to allow an insanity acquittee to pursue treatment, educational or other goals outside the confines of the treating facility. *O'Neal v. State*, 185 Ga. App. 838, 365 S.E.2d 894 (1988).

**EVIDENCE SUFFICIENT TO SUPPORT CONCLUSION THAT MENTALLY ILL PERSON MET CRITERIA FOR INVOLUNTARY TREATMENT AS "INPATIENT."** See *Ruff v. Central State Hosp.*, 192 Ga. App. 631, 385 S.E.2d 734, cert. denied, 192 Ga. App. 903, 385 S.E.2d 734 (1989); *Gross v. State*, 210 Ga. App. 125, 435 S.E.2d 496 (1993).

**THE "TRAUMATIC BRAIN INJURY" EXCLUSION** in this section did not preclude defendant's involuntary treatment since he was adjudicated mentally ill as defined in § 17-1-131. *Sikes v. State*, 221 Ga. App. 595, 472 S.E.2d 101 (1996).

**PATIENT DID NOT MEET CRITERIA FOR INVOLUNTARY COMMITMENT.** --Where patient did not express any suicidal or homicidal tendencies, and her psychiatrist did not believe her to present a substantial risk of imminent harm to herself or others, the medical expert witnesses of record were in agreement that patient's mental status did not meet the criteria for involuntary commitment set forth in this section. *Ermultu v. McCorkle*, 203 Ga. App. 335, 416 S.E.2d 792, cert. denied, 203 Ga. App. 906, 416 S.E.2d 792 (1992).

Where both the State's and the juvenile's expert witnesses testified that the juvenile did not require involuntary commitment, there was ample evidence supporting the juvenile court's determination that the juvenile did not meet the criteria for involuntary commitment; therefore, the transfer from juvenile court to Superior Court for criminal prosecution was proper. *In re A.B.S.*, 242 Ga. App. 277, 529 S.E.2d 415 (2000).

In finding for the government in an action brought by a wife after her husband shot her rendering her paraplegic, the court concluded that the wife failed to show that the alleged tortfeasor, a licensed social worker, had the requisite control over the husband to give rise to a legal duty as articulated by the Georgia Supreme Court in *Bradley Center, Inc. v. Wessner*, 250 Ga. 199 (1982); specifically, the court found that at no time did the husband meet the involuntary commitment standard under O.C.G.A. § 37-3-1(9.1), and that even if the husband had exhibited the statutory conditions for involuntary confinement, the social worker alone could not have had him committed in accordance with O.C.G.A. § 37-3-81. *Grijalva v. United States*, 289 F. Supp. 2d 1372 (M.D. Ga. 2003).

**PRIMARY TREATING PHYSICIAN ACTING AS CHIEF MEDICAL OFFICER.** --It is reasonable to permit a primary treating physician to act as chief medical officer for purposes of the discharge of his or her patients. *Georgia Dep't of Human Resources v. Peeks*, 261 Ga. 96, 403 S.E.2d 36 (1991).

Where a hospital's chief medical officer appointed a patient's primary treating physician to act as chief medical officer for purposes of discharging a patient, his failure to make the appointment in writing did not vitiate the appointment. *Georgia Dep't of Human Resources v. Peeks*, 261 Ga. 96, 403 S.E.2d 36 (1991).

**MENTAL HEALTH RECORDS** of a person who allegedly shot a number of people in a shopping mall were "clinical records" within the meaning of paragraph (2), and therefore not subject to inspection under the *Open Records Act*. *Southeastern Legal Found., Inc. v. Ledbetter*, 260 Ga. 803, 400 S.E.2d 630 (1991).

**DEFENDANT FAILED TO PROVE SANITY.** --Defendant failed to prove that defendant was not insane where the evidence indicated, inter alia, that defendant had multiple fixed delusions, including believing to be a secret service agent and owning the hospital where defendant was committed. *Gross v. State*, 262 Ga. App. 328, 585 S.E.2d 671 (2003).

CITED in *Strickland v. Peacock*, 88 Ga. App. 384, 77 S.E.2d 20 (1953); *Pennewell v. State*, 148 Ga. App. 611, 251 S.E.2d 832 (1979); *Bell v. State*, 244 Ga. 211, 259 S.E.2d 465 (1979); *Clark v. State*, 245 Ga. 629, 266 S.E.2d 466 (1980); *Benham v. Edwards*, 501 F. Supp. 1050 (N.D. Ga. 1980); *Sorrells v. Sorrells*, 247 Ga. 9, 274 S.E.2d 314

## O.C.G.A. § 37-3-1

(1981); *Gates v. State*, 167 Ga. App. 353, 306 S.E.2d 411 (1983); *Pope v. State*, 172 Ga. App. 396, 323 S.E.2d 268 (1984); *Nelson v. State*, 254 Ga. 611, 331 S.E.2d 554 (1985); *Roberts v. Grigsby*, 177 Ga. App. 377, 339 S.E.2d 633 (1985); *Nelson v. State Farm Life Ins. Co.*, 178 Ga. App. 670, 344 S.E.2d 492 (1986); *Ledbetter v. Cannon*, 192 Ga. App. 392, 384 S.E.2d 875 (1989); *Heichelbech v. Evans*, 798 F. Supp. 708 (M.D. Ga. 1992), aff'd, 995 F.2d 237 (11th Cir.), cert. denied, 510 U.S. 947, 114 S. Ct. 389, 126 L. Ed. 2d 338 (1993); *Nagel v. State*, 264 Ga. 150, 442 S.E.2d 446 (1994).

## OPINIONS OF THE ATTORNEY GENERAL

"GOVERNING AUTHORITY OF COUNTY" INTERPRETATION. --Hearing officers appointed pursuant to § 37-3-84 are appointed for the benefit of the probate court making the appointment, not for the benefit of the county of residence of any patient receiving a hearing before such hearing officer; therefore, the reference in paragraph (4) of this section to the "governing authority of the county" refers to the governing authority of the county in which the probate court is found. 1978 Op. Att'y Gen. No. U78-38.

LIMITATION OF SCOPE OF PATIENT. --An inmate transferred to Central State Hospital for treatment of a mental disorder would not be a patient within the meaning of this section. 1973 Op. Att'y Gen. No. 73-54.

## RESEARCH REFERENCES

C.J.S. --56 C.J.S., Mental Health, §§ 2, 4.

ALR. --Effect of death of appellant upon appeal from judgment of mental incompetence against him, 54 ALR2d 1161.  
Chapter Note