

9-1-1988

CRIMINAL PROCEDURE Mental Retardation: Provide Plea and Procedure for Pleas Made Subsequent to Conviction and Sentence

C. Christie

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

Recommended Citation

C. Christie, *CRIMINAL PROCEDURE Mental Retardation: Provide Plea and Procedure for Pleas Made Subsequent to Conviction and Sentence*, 5 GA. ST. U. L. REV. (1988).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol5/iss1/24>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

CRIMINAL PROCEDURE

Mental Retardation: Provide Plea and Procedure for Pleas Made Subsequent to Conviction and Sentence

CODE SECTIONS:	O.C.G.A. §§ 17-7-131 (amended), 17-10-60 to -63 (amended), 17-10-64 to -71 (new)
BILL NUMBER:	HB 878
ACT NUMBER:	1313
SUMMARY:	The Act allows for a plea of "guilty but mentally retarded," defines mental retardation within the meaning of such pleas, provides guidelines which parallel those for pleas of "guilty but mentally ill," prohibits imposing the death penalty upon persons found guilty but mentally retarded, and provides the exclusive postsentencing procedure for challenging mental competency to be executed.
EFFECTIVE DATE:	July 1, 1988

History

Under a 1952 statute, when a criminal defendant pled mental incompetency or insanity at the time of the criminal act, the trial judge was required to instruct the jury that it must specify in its verdict if an acquittal was returned based on such a plea.¹ If such a verdict was returned, the trial judge was to order the prisoner confined to Milledgeville State Hospital or any other state hospital. The order was required to provide that the prisoner was not to be released except in compliance with the statutory provisions under which other mental patients were discharged.²

In 1972 this statute was amended to require the Department of Public Health to select the appropriate state hospital for prisoner confinement and that such confinement was not to exceed one year.³ Furthermore, in the event hospitalization was required beyond the initial period ordered by the judge, the superintendent of the hospital was to apply for an order for continued hospitalization.⁴

In 1977 the statute was substantially amended by providing that, fol-

1. 1952 Ga. Laws 205—06.

2. *Id.*

3. 1972 Ga. Laws 848—49.

4. *Id.* at 849.

lowing a jury verdict of acquittal based on mental incompetency or insanity, the court was to "inquire into the sanity of the person at the time of acquittal and, upon a showing of good cause by the prosecutor, [could] defer ruling upon the same and order such person to be confined in a State mental hospital" chosen by the Department of Human Resources (DHR) for not less than thirty days.⁵ Also, a person committed to DHR was not to be released unless and until the court found that the prisoner did not meet the standards for civil commitment.⁶ The 1977 amendment also permitted DHR to transfer the prisoner to another state hospital by obtaining an order from the superior court in the county in which he had been committed.⁷ Although an application could be made for a prisoner's release on the grounds that he did not meet the standards for civil commitment, the hearing on that application could not be held until the prisoner was confined for at least thirty days.⁸ Upon an adverse finding by the court, another application could not be made until one year after the date of the hearing of the previous application.⁹

In 1982 the statute was further amended¹⁰ to define "insane at the time of the crime" and "mentally ill." The jury was required to find, and the court to instruct accordingly, whether the defendant was: "(1) Guilty; (2) Not guilty; (3) Not guilty by reason of insanity at the time of the crime; or (4) Guilty but mentally ill at the time of the crime, but the finding of guilty but mentally ill shall be made only in felony cases."¹¹

A person could be found not guilty by reason of insanity if he met the criteria now found in Code sections 16-3-2 and 16-3-3, which state the affirmative defenses of the "right-wrong test" and the "delusional compulsion test."¹² Additionally, a plea of not guilty by reason of insanity was

5. 1977 Ga. Laws 1293, 1295.

6. *Id.*

7. *Id.* 1977 Ga. Laws 1293 "[gave] the courts more supervision over the final discharge of NGRI [not guilty by reason of insanity] patients than over civilly-committed patients, by requiring the NGRI patient to petition the committing court for his release." 1979 Op. Att'y Gen. 86, 87. In addition, when the transfer of an NGRI patient would be to a hospital outside the state and outside of the jurisdiction of the court which committed him, such a transfer could only occur with the permission of the superior court; intrastate hospital transfers could be authorized by the Department of Human Resources. *Id.* at 87-88.

8. *Id.*

9. *Id.*

10. 1982 Ga. Laws 1477.

11. *Id.* at 1477-78.

12. *Id.* at 1478. The "right-wrong" test states: "A person shall not be found guilty of a crime if, at the time of the act, omission, or negligence constituting the crime, the person did not have mental capacity to distinguish between right and wrong in relation to such act, omission, or negligence." O.C.G.A. § 16-3-2 (1988). The "delusional compulsion test" states: "A person shall not be found guilty of a crime when, at the time of the act, omission, or negligence constituting the crime, the person . . . acted as he did because of a delusional compulsion as to such act which overmastered his will to resist committing the crime." O.C.G.A. § 16-3-3 (1988).

a confession to the facts pled, but an avoidance of conviction because of the defendant's existing mental state at the time of the crime.¹³

When a defendant was found not guilty by reason of insanity, the court retained jurisdiction and ordered him detained at a state mental health facility where the defendant's present mental condition was to be evaluated.¹⁴ After thirty days, if the evaluation report indicated that the defendant did not meet the civil commitment criteria, the trial judge could issue an order discharging the defendant from custody without a hearing.¹⁵

If the defendant was not discharged the judge was required to order a hearing to determine whether the defendant should be committed to DHR.¹⁶ At this hearing, the judge was permitted to take judicial notice of evidence presented at trial and to call any person having knowledge concerning whether the defendant was currently a mentally ill person in need of involuntary treatment or currently mentally retarded and in need of services.¹⁷ For the first time, mental retardation also was considered a mental state which permitted commitment upon an insanity acquittal.

A verdict of "guilty but mentally ill" required the court to sentence the defendant in the same manner as if the defendant was found guilty of the crime; however, the defendant was to receive treatment for his mental illness by either the penal institution or the DHR.¹⁸ The court could require defendants found guilty but mentally ill who were released on probation to undergo outpatient treatment.¹⁹

In 1985 the statute was amended to require that when a defendant entered a plea of guilty but mentally ill, he must undergo a psychological evaluation before the court would accept such a plea.²⁰ This had the effect of requiring such an evaluation at the pretrial phase in addition to the post-trial phase. Further, the judge was to hold a hearing on the issue of the defendant's mental condition to ensure that there was a factual basis for such a plea.²¹

The 1985 amendment also required that in any case in which the defense of insanity was interposed, the trial judge was required to charge the jury with information about the consequences of the verdicts of not guilty by reason of insanity and guilty but mentally ill.²²

13. *Moses v. State*, 167 Ga. App. 556, 307 S.E.2d 35 (1983).

14. 1982 Ga. Laws 1477, 1479.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 1481.

19. *Id.*

20. 1985 Ga. Laws 637, 639.

21. *Id.*

22. *Id.*

HB 878

HB 878 was introduced during the last two weeks of the 1987 session but was never reported out of the House Committee on Judiciary.²³ This permitted the committee to conduct hearings during the summer before the 1988 session.²⁴ The bill was introduced in response to two particular cases involving mentally retarded defendants.²⁵ During the summer, the House Subcommittee on Criminal Law and Procedure heard accounts of Jerome Bowden, a mildly retarded man executed in June 1986 for murdering a fifty-five-year-old woman while robbing her home.²⁶ Bowden's jailhouse pastor and his sister told the committee about Bowden's limited mental abilities.²⁷

According to one of its sponsors, HB 878 is the first bill in the United States to provide for a verdict of "guilty but mentally retarded" and to provide that one who is found to be guilty but mentally retarded may not be executed.²⁸ In addition, the bill also provides a procedure for challenging a death sentence on the grounds that the defendant is "mentally incompetent to be executed."²⁹ Thus, the mentally retarded defendant may have two avenues for avoiding the death sentence: either by a jury finding the defendant to be guilty but mentally retarded or by a successful post-sentencing challenge on grounds of mental incompetency to be executed.

HB 878, as introduced, was opposed by the Georgia Association of Criminal Defense Lawyers, the District Attorneys' Association of Georgia, the state Attorney General,³⁰ the Administration Floor Leader, and the chairman of the Senate Committee on Corrections.³¹ These parties influenced the final version of the bill.³²

HB 878, as introduced, would have added a new Code section defining "mental retardation" and prohibiting a mentally retarded person from being found guilty if, as a result of his retardation, he lacked substantial capacity either to conform his conduct to the requirements of the law or

23. Final Composite Status Sheet, Mar. 12, 1987.

24. Telephone interview with Pat Smith, Assistant Executive Director, Georgia Association of Retarded Citizens (Apr. 18, 1988) [hereinafter Smith Interview].

25. *Id.* See *Bowden v. Georgia*, 250 Ga. 185, 296 S.E.2d 576 (1982); *Spraggins v. Georgia*, 243 Ga. 73, 252 S.E.2d 620 (1979), *reh'g denied*, 452 U.S. 932 (1981).

26. Smith Interview, *supra* note 24. Defendant Jerome Bowden was subsequently executed.

27. Thurston, *Ban Urged on Death Penalty When Offender Is Retarded*, Atlanta J., June 30, 1987, at 2B, col. 4.

28. Telephone interview with Representative Charles Thomas, House District No. 69 (Apr. 18, 1988).

29. *Id.*

30. Smith Interview, *supra* note 24.

31. May, *Proposal to Ban Death Sentences for Retarded Fails*, Atlanta J., Feb. 2, 1988, at 14A, col. 5. Although these parties opposed the bill as written, they admitted that they were against executing the mentally retarded. *Id.*

32. Smith Interview, *supra* note 24.

to appreciate the criminality or wrongfulness of his behavior.³³ Further, the original bill would have replaced Code section 17-7-131, relating to pleas of insanity or mental incompetency, to include pleas of "not guilty by reason of mental retardation" and "guilty but mentally ill or mentally retarded" and also to include a definition of mental retardation.³⁴ Whenever the prior Code section referred to insanity or mental incompetence, HB 878, as introduced, provided similar tests, reports, jury instructions, treatment, and rights for the mentally retarded.³⁵ The original bill also would have amended Code section 17-10-30 by prohibiting the imposition of the death penalty upon a person found mentally retarded.³⁶

The House committee substitute to HB 878 did not address the issue of a "guilty but mentally retarded" verdict. Rather, it chose to deal with the issue indirectly by providing procedures for challenging mental competency to be executed.³⁷ The House committee substitute replaced Code sections 17-10-60 to 17-10-63 with twelve new sections which defined "mentally incompetent to be executed" and identified the procedures for challenging mental competency to be executed.³⁸ The House substitute required the applicant to submit to a psychiatric examination to assess his mental competency to be executed.³⁹ The application could not be filed until completion of direct appeal and until the trial judge had signed an order setting a time for execution.⁴⁰ After reviewing the evidence and after making its determination either for or against the applicant, the su-

33. HB 878, as introduced, 1988 Ga. Gen. Assem. The original provisions read as follows:

(a) As used in this Code section, the term "mentally retarded" means having significantly sub-average general intellectual functioning resulting in or associated with impairments in adaptive behavior and manifested during the developmental period.

(b) A person shall not be found guilty of a crime if, at the time of the act, omission, or negligence constituting the crime, the person:

(1) Was mentally retarded; and

(2) As a result of being mentally retarded, the person lacked substantial capacity either to:

(A) Appreciate the criminality or wrongfulness of the person's conduct; or

(B) Conform the person's conduct to the requirements of law.

Id.

HB 878, as passed, retained the language of proposed Code section 16-3-6(a) but incorporated it into the amended Code section 17-7-131(a)(3). See O.C.G.A. § 17-7-131(a)(3) (Supp. 1988). The final version of the bill omitted the language proposed in Code section 16-3-6(b). See O.C.G.A. § 16-3-2 (1988).

34. HB 878, as introduced, 1988 Ga. Gen. Assem.

35. *Id.*

36. *Id.*

37. HB 878 (HCS), 1988 Ga. Gen. Assem. The bill was assigned to the House Committee on Judiciary.

38. *Id.*

39. *Id.*

40. *Id.*

perior court judge was required to enter an appropriate order regarding the scheduled execution.⁴¹ The substitute also provided an appeal procedure for unsuccessful applicants.⁴² The House committee substitute passed and was ordered immediately transmitted to the Senate.⁴³

The Senate Committee on Special Judiciary rejected the House committee's approach. While accepting the House committee substitute's amendments to Code sections 17-10-60 to 17-10-71, the Senate committee substitute reinstated the original bill's definition of mentally retarded and offered its version of the guilty but mentally retarded verdict contained in Code section 17-7-131. It did not, however, include the original bill's concept of not guilty by reason of mental retardation.⁴⁴ However, the definition of "mentally retarded" was deleted on the Senate floor.⁴⁵ The Senate then passed the bill.⁴⁶ The House agreed on March 4, 1988, to the Senate committee substitute only after amending the bill once again to include the definition of mentally retarded.⁴⁷ However, the Senate disagreed with the House amendment to the Senate committee substitute, and the House insisted on its position.⁴⁸ Therefore, the bill was sent to a conference committee and both houses subsequently adopted the conference committee's substitute to HB 878.⁴⁹

The Act retains Code section 17-7-131, regarding pleas of insanity or mental incompetency, and defines mental retardation within provisions relating to pleas of "guilty but mentally retarded."⁵⁰ These provisions follow those previously required for persons found "guilty but mentally ill."⁵¹ The Act also provides similar jury charges, psychiatric evaluations, hospitalization, treatment, and probation procedures for persons found guilty but mentally retarded as those previously required for those found guilty but mentally ill.⁵² In addition, the Act prohibits imposing the death penalty upon a person found guilty but mentally retarded, and instead requires imprisonment for life.⁵³ The Act also retains the House committee substitute's version of Code sections 17-10-60 to 17-10-71 relating to

41. *Id.*

42. *Id.*

43. Final Composite Status Sheet, Mar. 7, 1988.

44. Compare HB 878 (SCS) with HB 878, as introduced, 1988 Ga. Gen. Assem.

45. HB 878 (SFA), 1988 Ga. Gen. Assem.

46. Final Composite Status Sheet, Mar. 7, 1988.

47. HB 878 (SCSHFA), 1988 Ga. Gen. Assem.

48. Final Composite Status Sheet, Mar. 7, 1988.

49. *Id.* See HB 878 (CCS), 1988 Ga. Gen. Assem.

50. O.C.G.A. § 17-7-131 (Supp. 1988).

51. Compare O.C.G.A. § 17-7-131 (Supp. 1988) with 1985 Ga. Laws 637.

52. *Id.*

53. O.C.G.A. § 17-7-131(j) (Supp. 1988).

the disposition of persons declared to be mentally incompetent to be executed.⁵⁴

C. Christie

54. O.C.G.A. §§ 17-10-60 to -71 (Supp. 1988).