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CRIMINAL PROCEDURE Pretrial Proceedings: Provide for Transfer of Indictments; Revise Procedures for Handling Individuals Not Competent to Stand Trial; Revise Criminal Discovery for Felonies

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CRIMINAL PROCEDURE

Pretrial Proceedings: Provide for Transfer of Indictments; Revise Procedures for Handling Individuals Not Competent to Stand Trial; Revise Criminal Discovery for Felonies

CODE SECTIONS:	O.C.G.A. §§ 17-2-4 (new), 17-7-130, 17-16-2, -4 to -5, -7 to -8 (amended), -10 (new), -20 (amended)
BILL NUMBER:	HB 627
ACT NUMBER:	495
GEORGIA LAWS:	1995 Ga. Laws 1250
SUMMARY:	The Act covers three different topics: transfer of indictment, competency to stand trial, and felony discovery. The transfer of indictment section allows an indictment or accusation to be transferred from the county where it is pending to the county where the defendant was arrested, is held, or is present. The competency to stand trial section of the Act modifies the procedures for handling persons who are found not competent to stand trial. The criminal discovery section of the Act modifies several criminal discovery procedures by fine tuning the 1994 revisions to Georgia's discovery laws.
EFFECTIVE DATE:	April 21, 1995[1]

History

Transfer of Indictment

Historically, a plea to an indictment had to be entered in the county where it was pending.[2] This presented a problem when a series of crimes took place in more than one county.[3] The

1. The Act became effective upon approval by the Governor.
2. 1968 Ga. Laws 1249 (codified at O.C.G.A. § 17-2-2 (1990)); Telephone Interview with Rebecca Keel, Assistant District Attorney for Fulton County (Apr. 4, 1995) [hereinafter Keel Interview].
3. Keel Interview, *supra* note 2.

defendant would have to be transported physically from where he was being held to each county to enter a separate plea.[4] This process wasted the resources of the courts and the law enforcement agencies responsible for holding and transporting the defendant.[5] The requirement that each plea be entered in the county of the indictment was also an impediment to effective plea bargaining.[6] Because the indictments were pending in different counties, no one prosecutorial officer could negotiate a comprehensive plea bargain.[7]

Competency to Stand Trial

The competency to stand trial issue arises from a distinction between the criteria for deciding whether a person is mentally competent to stand trial and the criteria for deciding whether a person may be involuntarily committed to a state institution.[8] To be mentally competent to stand trial, a person must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and a "rational as well as factual understanding of the proceedings against him."[9] To be involuntarily committed, "[t]he person must be mentally ill, . . . the person must be dangerous to himself or others, . . . or unable to care for his 'own physical health and safety as to create an imminently life-endangering crisis,' and the person must be 'in need of involuntary inpatient treatment.' "[10] Since the criteria are not identical, situations have arisen in which a person is not competent to stand trial and yet not eligible for involuntary commitment to a state mental institution.[11] Because the United States Supreme Court has held that a court cannot allow a person who is not mentally competent to stand trial to be

4. Keel Interview, *supra* note 2.
5. Keel Interview, *supra* note 2.
6. Keel Interview, *supra* note 2.
7. Keel Interview, *supra* note 2.
8. Keel Interview, *supra* note 2.
9. Dusky v. United States, 362 U.S. 402, 402 (1960) (per curiam).
10. Nagel v. State, 442 S.E.2d 446, 449-50 (Ga. 1994) (Sears, J. dissenting) (quoting O.C.G.A. § 37-3-1(9.1) (1994)).
11. *See id.; see also* Georgia Dep't of Human Resources v. Drust, 448 S.E.2d 364, 365 (Ga. 1994); Department of Human Resources v. Long, 458 S.E.2d 914 (Ga. Ct. App. 1995).

held indefinitely,[12] a person in this situation might have to be released.[13]

A recent case illustrates this problem: *Georgia Department of Human Resources v. Drust.*[14] In *Drust*, the defendant shot and killed two people and then shot himself in the head, resulting in a traumatic brain injury (TBI).[15] He entered a special plea of incompetency to stand trial under Code section 17-7-130.[16] The court found him incompetent to stand trial and ordered him transferred to the Georgia Department of Human Resources (DHR).[17] The DHR objected and appealed on the basis that the defendant's incompetence was the result of a TBI and that they could not adequately treat him.[18] The Georgia Supreme Court held that the statute applied regardless of the reason for incompetency.[19] However, in a concurring opinion, Justice Leah Sears noted that the DHR might be required to return the defendant to law enforcement officials of the committing court within ninety days if the DHR determined that the defendant was not committable.[20]

Another issue is whether the trial court has jurisdiction to determine whether a defendant meets the criteria for involuntary commitment.[21] Language in Code section 37-3-1 implies that jurisdiction rests only with the probate court.[22] However, superior court judges have asserted jurisdiction in certain cases.[23] Arguably, a superior court judge has better knowledge of the individual and the incident that brought the defendant

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12. Jackson v. Indiana, 406 U.S. 715, 730 (1972).

13. Telephone Interview with Rep. Tommy Chambless, House District No. 163 (Apr. 5, 1995) [hereinafter Chambless Interview].

14. 448 S.E.2d 364 (Ga. 1995).

15. *Id.* at 365.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* at 366 (Sears, J., concurring).

21. O.C.G.A. § 17-7-130(e)(2) (Supp. 1995); Keel Interview, *supra* note 2.

22. 1986 Ga. Laws 1098 (codified at O.C.G.A. § 37-3-1(4)(A) (Supp. 1995)); *see also* 1982 Ga. Laws 3, § 17 (formerly found at O.C.G.A. § 17-7-130 (Supp. 1994)); Telephone Interview with Don Geary, Assistant District Attorney for Fulton County (Apr. 7, 1995) [hereinafter Geary Interview].

23. *See, e.g.,* Department of Human Resources v. Long, 458 S.E.2d 914 (Ga. Ct. App. 1995).

into the system.[24] Subsequent to the passage of the Act, the Georgia Court of Appeals determined that the superior court has jurisdiction over this question.[25]

Discovery

The criminal discovery sections of the Code were revised comprehensively in the 1994 General Assembly.[26] These revisions were based on federal discovery statutes.[27] These revisions provided an entirely new scheme for felony discovery, but retained the old system for use with misdemeanors.[28] Inadvertently, no statutory discovery mechanism was provided for felonies docketed before January 1, 1995.[29] For felonies, the statute provided for expanded discovery of a defendant's statements while in custody[30] and provided for a new requirement that statements of witnesses be provided to the other party,[31] as well as notification of an alibi defense.[32] Once these provisions were enacted, both prosecutors and defense attorneys identified issues within the statute that needed to be changed.[33]

HB 627

Transfer of Indictment

The transfer of indictment section of the Act, Code section 17-2-4, allows an indictment, accusation, arrest warrant, or complaint to be transferred from the county where it is pending to the county where the defendant was arrested, is held, or is currently located.[34] The purpose of this section is to increase judicial efficiency by allowing for the consolidation of pleas in a

24. Keel Interview, *supra* note 2.
25. *Long*, 458 S.E.2d at 916.
26. Keel Interview, *supra* note 2; 1994 Ga. Laws 1895 (codified at O.C.G.A. §§ 24-10-130 to -133, -135, -137 to -139, 17-16-1 to -9, -20 to -23, 35-3-34 (Supp. 1995)); *Legislative Review,* 11 GA. ST. U. L. REV. 137 (1994).
27. Keel Interview, *supra* note 2.
28. *Legislative Review, supra* note 26, at 155.
29. Keel Interview, *supra* note 2.
30. *Legislative Review, supra* note 26, at 148-49.
31. *Legislative Review, supra* note 26, at 153.
32. *Legislative Review, supra* note 26, at 154.
33. Keel Interview, *supra* note 2.
34. O.C.G.A. § 17-2-4 (Supp. 1995).

single county.[35] A transfer may only take place if the defendant requests one in writing and the prosecuting attorneys from each county agree.[36] Also, the Act does not apply unless the defendant pleads guilty.[37] The Act is directed at situations in which the crimes are related, such as the abduction of a person in one county and a subsequent battery or involuntary confinement in another county, but is applicable even if the crimes are unrelated.[38] Instead of transporting the defendant to several different county courthouses to enter individual pleas, all charges may now be consolidated and resolved in the county where the defendant is arrested, held, or present.[39] Additionally, this section enables more effective plea bargaining.[40] Since all charges can be consolidated in one county, plea bargaining can be controlled by a single prosecutor.[41] Instead of negotiating several independent pleas with different prosecutors, a consolidated, comprehensive plea can be negotiated.[42]

An ancillary benefit of the Act is its effect on the recently approved process of building jails that will support several counties.[43] It is anticipated that a courthouse will be included at these new facilities.[44] If this section had not been enacted, only those prisoners whose charges were pending in the county where the courthouse or jail was located could enter pleas at that location.[45] The Act allows for the transfer of the charges to the county where the courthouse or jail facility is located.[46]

The General Assembly made only one significant change to the language of this section of the bill after its introduction. The words "district attorney" were changed to "prosecuting

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35. Telephone Interview with Rep. Jim Martin, House District No. 47 (Apr. 6, 1995) [hereinafter Martin Interview].

36. O.C.G.A. § 17-2-4 (Supp. 1995).

37. *Id.* This includes guilty but mentally ill, guilty but mentally retarded, and nolo contendre. *Id.*

38. Keel Interview, *supra* note 2.

39. O.C.G.A § 17-2-4 (Supp. 1995).

40. Keel Interview, *supra* note 2.

41. Keel Interview, *supra* note 2.

42. Keel Interview, *supra* note 2.

43. O.C.G.A. § 15-21-95 (Supp. 1995).

44. Chambless Interview, *supra* note 13. Rep. Chambless was a co-sponsor of HB 627. Chambless Interview, *supra* note 13.

45. Chambless Interview, *supra* note 13.

46. Chambless Interview, *supra* note 13.

attorney."[47] This change ensured that state solicitors working in the state courts were also covered by the Act.[48]

Competency to Stand Trial

The Act amends Code section 17-1-130 to revise the procedures for handling defendants who are not mentally competent to stand trial.[49] One of the primary purposes of this section is to clarify that the court in which the defendant has been charged has jurisdiction to determine both whether the defendant is competent to stand trial and whether the defendant meets the criteria for involuntary commitment to a state institution.[50] This provision resolves the dispute that previously existed over whether the probate court had exclusive jurisdiction over the issue of involuntary commitment.[51]

This section of the Act was first introduced as SB 160.[52] SB 160 would have applied to persons charged with certain violent crimes who either (1) had been determined by a judge or the DHR as being an "obvious threat to society" or (2) had been convicted of three or more felonies.[53] The original version of SB 160 would have provided that, if a person met these conditions but was found mentally incompetent to stand trial, the judge would hold a hearing to determine if probable cause existed to believe that the defendant was guilty of the crime.[54] If the court determined that probable cause existed, the judge would have the authority to commit the person to a state mental health facility, even if the person did not meet the criteria for involuntary

47. *Compare* HB 627, as introduced, 1995 Ga. Gen. Assem. *with* HB 627 (SCS), 1995 Ga. Gen. Assem.

48. Martin Interview, *supra* note 35.

49. O.C.G.A. § 17-7-130 (Supp. 1995).

50. Telephone Interview with Rep. Roy E. Barnes, House District No. 33 (Apr. 5, 1995).

51. *See supra* notes 21-25 and accompanying text.

52. SB 160, as introduced, 1995 Ga. Gen. Assem.; Martin Interview, *supra* note 36.

53. *Compare* SB 160, as introduced, 1995 Ga. Gen. Assem. *with* O.C.G.A. § 17-7-130(e)(2) (Supp. 1995). The list of crimes in the original bill included: murder, rape, aggravated sodomy, armed robbery, aggravated assault, and hijacking of a motor vehicle or aircraft. SB 160, as introduced, 1995 Ga. Gen. Assem.

54. SB 160, as introduced, 1995 Ga. Gen. Assem.

commitment.[55] However, concerns existed that the bill, as written, would be unconstitutional because it might not provide due process before confinement.[56]

Because of these concerns, the Senate Special Judiciary Committee offered a substitute to SB 160.[57] The Senate committee substitute added the requirement that the court order an independent evaluation of the defendant and further required that the defendant could not be committed unless the criteria for involuntary civil commitment were met.[58] The Senate committee substitute also added three more crimes to the bill.[59]

The Senate committee substitute also provided a mechanism for revisiting the issue of competency.[60] Previously, no specific statute addressed this issue, although courts had reevaluated the mental competency of defendants who were initially found incompetent to stand trial.[61] This new subsection, as incorporated into the Act, provides that the state can petition for a rehearing on the issue of competency at any time and that the motion must be granted if the state shows that "reasonable grounds to believe that the person's mental condition has changed" are present.[62]

The House Judiciary Committee made additional changes to SB 160.[63] The House Committee deleted the language that required a probable cause hearing before a defendant found mentally incompetent to stand trial could be committed to a state mental health facility.[64] This language was deleted because probable cause is determined in indictment proceedings and the

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55. *Id.*

56. Keel Interview, *supra* note 2.

57. SB 160 (SCS), 1995 Ga. Gen. Assem.

58. *Compare* SB 160, as introduced, 1995 Ga. Gen. Assem. *with* SB 160 (SCS), 1995 Ga. Gen. Assem.

59. SB 160 (SCS), 1995 Ga. Gen. Assem. These crimes were aggravated battery, aggravated sexual battery, and aggravated child molestation. *Id.* These crimes were included because they were considered as serious as those already listed. Keel Interview, *supra* note 2; *see supra* note 53.

60. SB 160 (SCS), 1995 Ga. Gen. Assem.

61. Keel Interview, *supra* note 2.

62. O.C.G.A. § 17-7-130(g) (Supp. 1995).

63. *Compare* SB 160 (SCS), 1995 Ga. Gen. Assem. *with* SB 160 (HCS), 1995 Ga. Gen. Assem. The House Committee also added the crime of aggravated stalking to the bill. SB 160 (HCS), 1995 Ga. Gen. Assem.

64. SB 160 (HCS), 1995 Ga. Gen. Assem.

Committee was concerned that revisiting the probable cause issue would shift the focus from the defendant's mental state to his or her guilt or innocence.[65] The Committee also amended the bill to give the judge discretion to order an independent evaluation of the defendant's competency and to require that the State prove by "clear and convincing evidence" that the person meets the criteria for involuntary civil commitment.[66]

The House committee substitute also also added a provision for the release of persons from an institution.[67] This provision was added due to concern over how to release persons once they were committed.[68] This concern is heightened by the fact that these facilities are frequently at or over capacity.[69]

The most controversial portion of the House committee substitute was the proposed amendment of Code section 37-3-1.[70] Section 37-3-1 defines "traumatic brain injury" (TBI) and specifically excludes it from being considered a mental illness.[71] The House committee substitute would have brought TBI within the meaning of mental illness if the person was committed as a result of being charged with one of the listed felonies.[72] In addition, to overcome concern about the cost of such commitment, the amendment provided that the cost of the care would be charged to the appropriate county.[73]

Because it was not possible to get SB 160 on the Rules Committee calendar, HB 627 was amended to include its language.[74] The section redefining TBI was intentionally omitted from the Act.[75] This change was made because the TBI

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65. Martin Interview, *supra* note 35.
66. SB 160 (HCS), 1995 Ga. Gen. Assem.
67. *Id.*
68. Telephone Interview with Maury Weill, Georgia Department of Human Resources (Apr. 6, 1995).
69. *Id.*
70. Chambless Interview, *supra* note 13.
71. 1989 Ga. Laws 1566, § 3, at 1568-69 (codified at O.C.G.A. § 37-3-1(16.1) (Supp. 1994)).
72. SB 160 (HCS), 1995 Ga. Gen. Assem.
73. Keel Interview, *supra* note 2; SB 160 (HCS), 1995 Ga. Gen. Assem.
74. Chambless Interview, *supra* note 13.
75. *Compare* SB 160 (HCS), 1995 Ga. Gen. Assem. *with* O.C.G.A. 17-7-130(e) (Supp. 1995); Chambless Interview, *supra* note 13.

section was very controversial and concern existed that its inclusion might cause the defeat of HB 627.[76]

Discovery

The statutory provisions for criminal discovery were substantially revised in 1994.[77] The Act modifies and clarifies some of the 1994 revisions. First, the Act provides a statutory discovery mechanism for felonies docketed before January 1, 1995.[78] Second, the Act removes the ability of defendants to choose individual sections of the discovery statute and omit others.[79] Third, the Act replaces the actual results of scientific or psychiatric evaluations with a written report summarizing those results.[80] Fourth, the Act provides that information gathered from a defendant in custody is discoverable, even if it is not obtained during an interrogation.[81] Fifth, the Act makes compliance time for some sections more flexible.[82] Sixth, the Act clarifies that a written report from a psychiatrist does not include treatment notes.[83] Seventh, the Act provides that social security numbers are no longer discoverable.[84] Finally, the Act provides more time for the prosecutor to request alibi witness information and eliminates the requirement that the defense or prosecution provide material that was previously supplied by the other party.[85]

Omission of Felony Discovery Prior to January 1, 1995

The 1994 Act, which established new felony discovery procedures, applied only to felonies docketed after January 1, 1995.[86] The prior discovery procedures were recodified as article 2, but were made applicable only to misdemeanors.[87] This

76. Chambless Interview, *supra* note 13.
77. *See supra* notes 26-33 and accompanying text.
78. O.C.G.A. §§ 17-16-2(d), -20 (Supp. 1995).
79. *Id.* § 17-16-4(a)(4), (b)(2).
80. *Id.*
81. *Id.* § 17-16-4(a)(1).
82. *Id.* § 17-16-4(a)(1)-(4).
83. *Id.* § 17-16-4(a)(4), (b)(2).
84. *Id.* §§ 17-16-5, -8.
85. *Id.* §§ 17-16-5, -10.
86. 1994 Ga. Laws 1895 (formerly found at O.C.G.A. § 17-16-20 (Supp. 1994)); *Legislative Review, supra* note 26.
87. 1994 Ga. Laws 1895 (formerly found at O.C.G.A. § 17-16-20 (Supp.

omission left a gap in discovery for felonies docketed prior to January 1, 1995 for which discovery had not been completed.[88]

The Act gives prosecutors and defendants the option of agreeing to discovery under the article 1 procedures for cases docketed before January 1, 1995.[89] If the parties do not mutually agree to discovery under article 1, then article 2 will apply.[90] Originally, the language indicated that article 2 discovery would apply to all felonies docketed before January 1, 1995.[91] This language was amended in the Senate Special Judiciary Committee to clarify that if article 1 discovery was selected, then article 2 discovery would no longer apply.[92]

Several significant differences exist between discovery under article 1 and article 2. Article 2 discovery was the statutory method of discovery for all crimes prior to July 1, 1994.[93] Article 2 discovery does not include: non-custodial statements of a defendant; the opportunity to inspect tangible objects, audio and visual tapes, and buildings; witness statements; and notice of alibi defenses.[94] In addition, the State gets virtually no discovery under article 2, and sanctions are handled differently.[95]

Piecemeal Discovery

Under prior law, each category of discovery was activated by the defendant's demand for specific information.[96] The individual discovery paragraphs began with the clause: "Upon

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1994)).

88. Keel Interview, *supra* note 2.

89. O.C.G.A. § 17-16-2(d) (Supp. 1995).

90. *Id.* § 17-16-20.

91. HB 627, as introduced, 1995 Ga. Gen. Assem.

92. *Compare* HB 627 (SCS), 1995 Ga. Gen. Assem. *with* HB 627, as introduced, 1995 Ga. Gen. Assem.

93. Keel Interview, *supra* note 2.

94. 1994 Ga. Laws 1895, § 4, at 1906-08 (codified at O.C.G.A. §§ 17-16-20 to -23 (Supp. 1995)).

95. *Id.* Sanctions in article 2 result in exclusion of the evidence, even if bad faith is not shown. *Id.* Article 1 violations are sanctioned only for bad faith and prejudice, and the court has discretion in fashioning a remedy. O.C.G.A. § 17-16-6 (Supp. 1995).

96. 1994 Ga. Laws 1895 (formerly found at O.C.G.A. § 17-16-4(a)(1)-(3) (Supp. 1994)).

written request of a defendant at or prior to arraignment . . . ."[97] Since this language appeared in each paragraph, some attorneys interpreted the language as giving the defense an opportunity to pick and choose which portions of the article it wished to invoke.[98] This interpretation was not the intent of the 1994 Act.[99]

To eliminate this potential confusion, the Act amends Code section 17-16-4 and removes the requirement that the defendant request information under the individual subsections.[100] Once the defense has notified the prosecution that it has elected article 1 discovery, application of the individual subsections is automatic.[101]

Requirement for a Report of Test Results

Prior law required each party, upon invocation of Code section 17-16-4(a)(4) by the defendant, to provide the other party the opportunity to inspect and copy "any results or reports of physical or mental examinations and of scientific tests or experiments . . . within the possession, custody, or control" of the prosecution or defense.[102] This situation presented a problem because a party could avoid providing material to the other side by leaving the results in the hands of the person performing the examination or test and requesting only a verbal report before trial.[103] The Act resolves this problem by requiring the preparation of a written report that summarizes the results of any tests and examinations if the tests, examinations, or testimony based on them will be introduced in a party's case in chief or rebuttal.[104] The Act also removes the "within the possession, custody, or control" of the defense or prosecution language.[105]

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97. *Id.*
98. Keel Interview, *supra* note 2.
99. Keel Interview, *supra* note 2.
100. *See* O.C.G.A. § 17-16-4(a)(1)-(4) (Supp. 1995).
101. *Id.* § 17-16-2(a).
102. 1994 Ga. Laws 1895, § 4, at 1902-03 (formerly found at O.C.G.A. § 17-16-4(a)(4), (b)(2) (Supp. 1994)).
103. Keel Interview, *supra* note 2.
104. O.C.G.A. § 17-16-4(a)(4), (b)(2) (Supp. 1995).
105. *Compare* 1994 Ga. Laws 1895, § 4, at 1902-03 (formerly found at O.C.G.A. § 17-16-4(a)(4), (b)(2) (Supp. 1994)) *with* O.C.G.A. § 17-16-4(a)(4),

Defendant's Statements Made While in Custody, but Not in Response to Interrogation

In 1982, the Supreme Court of Georgia held that statements made by a defendant while in custody had to be provided to the defense if the statements were to be used at trial.[106] The court arrived at this result by interpreting the then applicable Code section.[107] This result was reversed by the 1994 Act, which restricted discoverable statements to those "in response to interrogation by any person then known to the defendant to be a law enforcement officer or member of the prosecuting attorney's staff."[108] The current Act amends Code section 17-16-4(a)(1) to include "any . . . relevant written or oral statement made by the defendant while in custody, whether or not in response to interrogation."[109] The intent of the bill was to codify the law as it had existed as a result of the 1982 Georgia Supreme Court decision and before the 1994 Act.[110] This language was not changed from the language in the original bill.[111]

Other Changes

The Act also provides more flexible time frames for discovery. The 1994 Act provided that discovery information be provided "no later than ten days prior to trial, or sooner if ordered by the court."[112] As a result, the court had no discretion to allow discovery less than ten days before the trial.[113] This presented a problem because in some simple cases the time between

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(b)(2) (Supp. 1995).

106. Walraven v. State, 297 S.E.2d 278, 282-83 (Ga. 1982). In *Walraven*, the defendant allegedly told another inmate that he had committed the murders of which he was accused. The prosecution introduced this statement against the defendant without notifying the defense in advance. *Id.*

107. *Id.* The court interpreted GA. CODE ANN. § 27-1302. *Id.*

108. 1994 Ga. Laws 1895, § 4, at 1900-01 (formerly found at O.C.G.A. § 17-16-4(a)(1) (Supp. 1994)).

109. O.C.G.A. § 17-16-4(a)(1) (Supp. 1995).

110. Keel Interview, *supra* note 2.

111. *Compare* HB 627, as introduced, 1995 Ga. Gen. Assem. *with* O.C.G.A. § 17-16-4(a)(1) (Supp. 1995).

112. 1994 Ga. Laws 1895, § 4, at 1900-02 (formerly found at O.C.G.A. § 17-16-4(a)(2) (Supp. 1994)).

113. *See id.*

arraignment and trial was not much greater than ten days.[114] For this reason, the Act provides the judge discretion to require or allow discovery either prior to or after the ten-day deadline.[115]

The Act also clarifies that a written report of a psychologist or psychiatrist does not include therapy notes.[116] The distinction is between an evaluation for the purpose of introduction at trial, which would be discoverable, and the treatment of a person in overcoming a problem—frequently the trauma caused to a victim by the crime—which would not be discoverable.[117]

The original bill stated that: "Nothing in this Code section shall require the disclosure of any material, note, or memorandum relating to the psychiatric or psychological treatment or therapy of any defendant or witness other than the report or summary described in this subsection."[118] Concern existed that this language might be interpreted to require production of a summary report of therapy.[119] The language was changed as follows: "Nothing in this Code section shall require the disclosure of any other material, note, or memorandum relating to the psychiatric or psychological treatment or therapy of any defendant or witness."[120] The intent of the language was to ensure that the treatment notes were not discoverable.[121]

The Act also eliminates the requirement that witnesses' social security numbers be provided.[122] Individuals were reluctant to give out this information, and there was concern that the disclosure of social security numbers would deter some people from coming forward as witnesses.[123] Police officers in particular were reluctant to have this information provided to defendants.[124]

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114. Keel Interview, *supra* note 2.
115. O.C.G.A. § 17-16-4(a)(1)-(4) (Supp. 1995).
116. *Id.* § 17-16-4(a)(4), (b)(2).
117. Keel Interview, *supra* note 2.
118. HB 627, as introduced, 1995 Ga. Gen. Assem.; Keel Interview, *supra* note 2.
119. Keel Interview, *supra* note 2.
120. O.C.G.A. § 17-16-4(a)(4), (b)(2) (Supp. 1995).
121. Keel Interview, *supra* note 2.
122. Chambless Interview, *supra* note 13.
123. Chambless Interview, *supra* note 13.
124. Keel Interview, *supra* note 2.

The Act also changes the amount of time that the prosecution has to demand a statement by the defense regarding whether it will put forward an alibi defense.[125] The 1994 Act required that a demand for the information be made "at or prior to arraignment" unless the court permitted otherwise.[126] The 1995 Act provides that the demand may be made up to ten days after arraignment.[127] The reason for this change is that making the demand according to the previous procedure was not always practical because arraignment occurred so quickly after arrest.[128]

The Act also eliminates redundant discovery. The Act creates Code section 17-16-10, which exempts each party from providing information otherwise required by the article, but which has already been provided by the opposing party.[129] For example, the defense would not have to include in its list of witnesses any persons who had been listed as prosecution witnesses.[130] The Act makes clear that this does not preclude a party from calling a witness who was included only on the other party's witness list.[131] The purpose of this section is to increase the efficiency of the process by eliminating redundant provision of information.[132] However, prosecutors are concerned that this provision will create a burden for them.[133] Because the defense need not inform the prosecution if it plans to call a witness on the prosecution's witness list, the prosecution will be vulnerable to surprise.[134] To protect against this occurrence, the prosecution may have to repeatedly contact their witnesses to ensure that the substance of their testimony has not changed.[135]

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125. *Compare* 1994 Ga. Laws 1895 (formerly found at O.C.G.A. § 17-16-5(a) (Supp. 1994)) *with* O.C.G.A. § 17-16-5(a) (Supp. 1995).
126. 1994 Ga. Laws 1895, § 4, at 1904 (formerly found at O.C.G.A. § 17-16-5(a) (Supp. 1994)).
127. O.C.G.A. § 17-16-5(a)(1) (Supp. 1995).
128. Keel Interview, *supra* note 2.
129. O.C.G.A. § 17-16-10 (Supp. 1995).
130. Keel Interview, *supra* note 2.
131. O.C.G.A. § 17-16-10 (Supp. 1995).
132. Keel Interview, *supra* note 2.
133. Keel Interview, *supra* note 2.
134. Keel Interview, *supra* note 2.
135. Keel Interview, *supra* note 2.