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## HEALTH Hospitalization for Tuberculosis: Ensure Due Process for Persons Involuntarily Hospitalized

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## HEALTH

### *Hospitalization for Tuberculosis: Ensure Due Process for Persons Involuntarily Hospitalized*

CODE SECTIONS: O.C.G.A. §§ 31-14-2 to -3, -5 to -8 (amended), -8.1, -8.2 (new), -9 (amended), -14 (new)

BILL NUMBER: HB 454

ACT NUMBER: 491

GEORGIA LAWS: 1995 Ga. Laws 1231

SUMMARY: The Act revises procedures for the involuntary commitment of persons with tuberculosis. Such persons must be provided a full and fair hearing in which the state must prove by clear and convincing evidence that the patient presents a substantial risk of exposing others to an imminent danger of infection. Such persons have the right to counsel, and counsel must be appointed for those unable to afford legal representation. Confinement for more than six months requires a showing that the patient still has contagious tuberculosis or that the patient is likely not to comply with treatment.

EFFECTIVE DATE: April 21, 1995<sup>1</sup>

#### *History*

On September 12, 1994, Charles Martin of Augusta, Georgia voluntarily admitted himself to the University Hospital of Augusta.<sup>2</sup> Within a month, he found himself involuntarily confined to the Northwest Georgia Regional Hospital for treatment of contagious tuberculosis.<sup>3</sup> On November 22, 1994, the American Civil Liberties Union and Georgia Legal Services brought a federal class action suit on Martin's behalf against the

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1. The Act became effective upon approval of the Governor.
  2. *Martin v. Ledbetter*, No. 94-CV-0299 (N.D. Ga. filed Nov. 22, 1994).
  3. *Id.*

Georgia Department of Human Resources, claiming Georgia's procedures for involuntary hospitalization of tuberculosis patients were unconstitutional.<sup>4</sup> The suit charged that Georgia's involuntary treatment statute failed to provide adequate procedural safeguards and was vague and overbroad in violation of procedural and substantive due process.<sup>5</sup> Specifically, the suit alleged that Georgia's procedures failed to provide: (1) notice of procedural rights; (2) an opportunity to obtain counsel or for the appointment of counsel; (3) an opportunity for the patient to confront, cross-examine, or subpoena witnesses; and (4) an opportunity for the patient to provide evidence or obtain an independent medical evaluation.<sup>6</sup> In addition, the suit claimed that the statute failed to designate which party bore the burden of proof or the applicable standard of proof, did not require a showing that the patient posed a direct threat to public health, and did not provide an additional hearing for continued confinement of the patient.<sup>7</sup> Upon recommendation of the Georgia Attorney General, the Department of Human Resources settled the lawsuit.<sup>8</sup> The settlement agreement required the state to introduce legislation to establish "adequate and proper constitutional procedures and standards for the in-patient commitment and discharge of patients with contagious and active tuberculosis."<sup>9</sup>

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4. *Id.*; Telephone Interview with Tom Wade, Assistant Commissioner of Policy and Government Services, Department of Human Resources (Apr. 7, 1995) [hereinafter Wade Interview].

5. *Martin v. Ledbetter*, No. 94-CV-0299 (N.D. Ga. filed Nov. 22, 1994).

6. *Id.*

7. *Id.* The suit also asserted an equal protection violation since the Code mandates different commitment procedures for involuntary tuberculosis patients and involuntary mental patients without a rational basis. *Id.* In addition, the suit alleged violations of section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (1988), and the Americans with Disabilities Act, 42 U.S.C. §§ 12,101-12,213 (Supp. 1993). *Id.*

8. Wade Interview, *supra* note 4.

9. *Martin v. Ledbetter*, No. 4:94-CV-0299-HCM (N.D. Ga. Dec. 16, 1994) (interim consent order); see also Telephone Interview with Gerald Weber, Georgia American Civil Liberties Union (Apr. 7, 1995) [hereinafter Weber Interview].

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The Act extensively revises chapter 14 of title 31 by amending Code sections 31-14-2 to -3, -5 to -8, and adding Code section 31-14-8.1.<sup>10</sup> These changes are intended to protect the rights of indigent tuberculosis sufferers by providing more detailed procedures and standards for commitment proceedings.<sup>11</sup>

Under the Act, the county board of health or the Department of Human Resources (Department) must have evidence that a person has contagious tuberculosis and presents a substantial risk of exposing others to an imminent danger of infection before initiating commitment proceedings.<sup>12</sup> The Act requires that the petition for commitment be executed under oath and specify the evidence<sup>13</sup> that supports the allegations.<sup>14</sup> The Act also requires that the petition be accompanied by a supporting certificate from a physician.<sup>15</sup> The old law merely required a general allegation that the "public health requires commitment of the person named."<sup>16</sup>

The Act requires that a hearing be held between seven and twelve days after the filing of the petition.<sup>17</sup> The person subject to commitment must be notified of the proceedings and of the right to counsel, including the right to appointed counsel.<sup>18</sup> The commitment hearing must be recorded and the parties have the right "to confront and cross-examine witnesses, to offer evidence, and to subpoena witnesses."<sup>19</sup> The Act specifies that the rules of evidence for civil cases apply and places the burden of proof, by clear and convincing evidence, on the Department.<sup>20</sup> The Act allows the immediate confinement of persons who may flee or present an imminent danger of infecting others.<sup>21</sup>

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10. O.C.G.A. §§ 31-14-2, -3, -5 to -8.1 (Supp. 1995).

11. Wade Interview, *supra* note 4; Weber Interview, *supra* note 9.

12. O.C.G.A. § 31-14-2 (Supp. 1995).

13. *Id.* (requiring that such evidence be less than thirty days old).

14. *Id.*

15. *Id.* § 31-4-3.

16. 1964 Ga. Laws 499, § 1, at 549 (formerly found at O.C.G.A. § 31-14-2 (1991)). The old law also provided that "[s]trictness of pleading shall not be required." *Id.*

17. O.C.G.A. § 31-14-3(a) (Supp. 1995).

18. *Id.*

19. *Id.* § 31-4-3(b).

20. *Id.*

21. *Id.* § 31-14-5.

In order to commit the person, the court must make specific findings that: (1) "the person has contagious tuberculosis"; (2) the person is violating the rules and orders established for treatment of the disease; (3) the person "presents a substantial risk of exposing other persons to an imminent danger of infection"; and (4) no less restrictive alternative to involuntary treatment exists.<sup>22</sup> If these findings are made, the person may be committed for an initial period of no more than six months.<sup>23</sup> If the conditions that warrant confinement subside, the patient must be released.<sup>24</sup> If the Department seeks confinement beyond six months, the responsible physician must prepare a report specifying that the patient still has contagious tuberculosis or that the patient has active tuberculosis and a history of noncompliance with treatment that will predictably lead to drug-resistant tuberculosis.<sup>25</sup> The patient has a right to a hearing under the Georgia Administrative Procedures Act<sup>26</sup> and the right to counsel if confinement beyond six months is sought.<sup>27</sup> If the hearing examiner finds further confinement is warranted, or if the patient does not demand a hearing, the patient may be confined for an additional six months.<sup>28</sup>

Lastly, the Act creates Code section 31-14-8.2, which allows either party to appeal orders of the hearing examiner or the court and requires appointment of counsel for indigent patients who wish to appeal.<sup>29</sup> The Act also allows patients, their friends, or relatives to petition the court for the patient's release.<sup>30</sup> In addition, they may also bring a habeas corpus action to secure the discharge of the patient.<sup>31</sup> Officials who comply in good faith

22. *Id.* § 31-14-7. The old law allowed the court to commit the person after "considering the petition, the report of the examination, if any, and such other evidence as may be produced by the parties." 1964 Ga. Laws 499, § 1, at 550 (formerly found at O.C.G.A. § 31-14-7 (1991)).

23. O.C.G.A. § 31-14-7(a) (Supp. 1995). The old law did not specify a maximum confinement period. *See* 1964 Ga. Laws 499 (formerly found at O.C.G.A. § 31-14-8 (1991)).

24. O.C.G.A. § 31-14-8 (Supp. 1995).

25. *Id.* § 31-14-8.1(a).

26. 1965 Ga. Laws 283 (codified at O.C.G.A. § 50-13-13 (1994)).

27. O.C.G.A. § 31-14-8.1(b) (Supp. 1995).

28. *Id.* § 31-14-8.1(c)-(d).

29. *Id.* § 31-14-8.2.

30. *Id.* § 31-14-9(a).

31. *Id.* § 31-14-9(b).

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with the provisions of the Act are immunized from civil or criminal liability in connection with the confinement or discharge of a tubercular patient.<sup>32</sup>

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32. *Id.* § 31-14-14.