

Legislative Update: Changes in 17-7-130 Incompetent to Stand Trial (IST)

Senate Bill 190, which recently passed in the Georgia General Assembly, clarifies that courts may order defendants who are possibly Incompetent to Stand Trial (IST) and charged with a misdemeanor or nonviolent felony crimes to be evaluated and treated on an outpatient basis. The bill also clarifies the process that is to be followed when a defendant is found to be IST. Defendants will have the right to have a hearing every year to assess if there's a continued finding of IST. The bill also provides that the longest anyone charged with a misdemeanor can be committed under O.C.G.A. §17-7-130 will be one year.

The changes to the Incompetency statute should allow for significant savings compared to treating these persons in a hospital setting. This flexibility in the legal procedure will hopefully increase DHR's ability to successfully restore individuals to competency by avoiding the added stresses of hospitalization for misdemeanor and nonviolent defendants.

The bill will require DHR to perform an IST evaluation within 90 days of receiving an order from the court or actually obtaining custody of the defendant. DHR will still be required to make a determination as to whether the individual can be restored to mental competency to stand trial in the foreseeable future. The bill also requires DHR to report back to the court every year on the success of their efforts to restore a defendant to competency.

Under this revised law, if a defendant is IST and cannot be restored to competency within a year, the court is required to have a commitment hearing. If a defendant does not meet the criteria for inpatient or outpatient civil commitment, they would be entitled to be released. However, even if the charges are dismissed for any reason, the defendant may still be referred to the Probate Court for commitment proceedings. The State would have the burden of proof at these commitment hearings and would have to prove by "clear and convincing evidence" that the defendant meets the criteria for involuntary civil commitment.

SB 190 is a tremendous improvement in our criminal procedure for defendants who may be IST. The new law maintains the court's authority to protect defendants and society from the possible danger of untreated mental illness, and the rights of the mentally ill to be treated in the least restrictive environment that is available to them. It should reduce or eliminate the problem of defendants who linger in treatment facilities with a finding of IST who do not need to be there.