

XIII. MENTAL HEALTH COMMITMENT HEARINGS

A. Code Sections: O.C.G.A. §15-11-149, 37-3-1, 37-3-20, 37-3-41, 37-3-61, 37-3-62, 37-3-81, 37-3-81.1, 37-3-83, 37-3-93, 37-3-101, 37-3-147, 37-3-150

B. Uniform Juvenile Court Rules 20.1, 20.2, 20.3

C. Procedure

1. Petition for court ordered evaluation:

a. O.C.G.A. §15-11-149 provides that if the court has evidence that a child under its jurisdiction is mentally ill, the court can order that the child be evaluated. When utilizing this provision, courts are encouraged to seek an outpatient evaluation except when circumstances indicate that an inpatient evaluation is absolutely necessary. Because there are few procedural due process provisions within the Code section, an inpatient evaluation should be closely monitored by the ordering court so that the evaluation and report back take place as quickly as possible. If the evaluation finds the child to be committable, the court can commit the child to the Division of Mental Health, Developmental Disabilities, and Addictive Diseases of the Department of Human Resources according to the criteria established for involuntary commitment within Title 37 of the O.C.G.A. (See subsection c. of this chapter for procedure)

b. Voluntary Commitment Procedure -- Any child for whom application has been made by a parent or guardian may be received by a mental health facility for observation and diagnosis. O.C.G.A. §37-3-20. The parent or guardian of a child shall give written consent for the child's voluntary treatment.

c. Involuntary Commitment Procedure (Evaluation)

(i) Any person may file with the juvenile court a petition executed under oath alleging that a child within the county is a mentally ill child requiring involuntary treatment. The petition must be accompanied by the certificate of a physician or psychologist stating that he or she has examined the child within the preceding five days and has found that the child may be a mentally ill child requiring involuntary treatment and that a full evaluation of the child is necessary. O.C.G.A. §37-3-61(2).

(ii) The court shall review the petitions filed and if the court finds reasonable cause to believe that the child may be a mentally ill child requiring involuntary treatment, the court shall hold a full and fair hearing on the petition. O.C.G.A. §37-3-62(a). (See section 4 of this chapter for procedure).

(iii) After a full and fair hearing or, if the hearing is waived, after a full review of the evidence, if the court is satisfied that immediate evaluation is necessary, the court shall issue an order to any peace officer to deliver the child to an evaluating facility. O.C.G.A. §37-3-62(b).

If the court is not satisfied that evaluation is necessary, the court shall dismiss the petition.

2. Emergency admission to county receiving facility for evaluation based on physician's certification:

a. Any physician within Georgia may execute a certificate stating that he or she has personally examined a child within the preceding 48 hours, and based on observations set forth in the certificate, the child appears to be mentally ill requiring involuntary treatment. O.C.G.A. §37-3-41(a).

b. A physician's certificate expires seven days after it is executed. O.C.G.A. §37-3-41(a).

c. Any peace officer, within 72 hours after receiving the certificate, must make diligent efforts to take into custody the child named in the certificate. The alleged mentally ill child should be taken to the nearest available emergency receiving facility serving the county in which the child is found, where he or she will be received for examination. O.C.G.A. §37-3-41(a).

3. Emergency admission to county receiving facility for evaluation pursuant to a court order:

a. The juvenile court of the county in which a child is found may issue an order commanding any peace officer to take such child into custody and deliver him or her forthwith for examination, either to:

(i) the nearest available emergency receiving facility serving the county in which the child is found, or

(ii) to a physician who has agreed to examine such child and who will provide a certificate to permit delivery of such child to an emergency receiving facility. O.C.G.A. §37-3-41(b).

(NOTE: The Division of Mental Health, Developmental Disabilities, and Addictive Diseases of the Department of Human Resources provides or is planning to provide a child and adolescent mental health regional evaluation team for each of the state hospitals to perform juvenile court-ordered evaluations on an outpatient basis to more quickly respond to the court. So far, the division has received state appropriations to fund a team for Georgia Regional Hospital at Atlanta, Georgia Mental Health Institute and Central State Hospital. Check with a division representative to see what is currently available in your area.)

b. Such order may only be issued if based either upon:

(i) an unexpired physician's certificate, or

(ii) affidavits of at least two persons who attest that, within the preceding 48 hours, they have seen that child taken into custody and that, based upon observations contained in their affidavit, they have reason to believe that such child is a mentally ill child requiring involuntary treatment. O.C.G.A. §37-3-41(b).

(iii) The court order shall expire seven days after it is executed. O.C.G.A. §37-3-41(b).

4. Notice Provisions. O.C.G.A. §37-3-62; Hearing Procedures. O.C.G.A. §37-3-1(8)

a. Upon the court reviewing a filed petition and finding reasonable cause to believe the child may be mentally ill and requiring involuntary treatment, a full and fair hearing shall be held on said petition no sooner than ten days and no later than fifteen days after the filing of the petition. Within five days after the filing of said petition, the court shall serve notice of the hearing on the child and his or her representatives and the petitioner. The notice shall include the time and place of the hearing.

b. A hearing may be held in a regular courtroom or in an informal setting but shall be recorded electronically or by a qualified court reporter.

c. Patients have the right to be represented by counsel. Within the juvenile court it is advisable to appoint a guardian ad litem and/or attorney for the child and an attorney for the child's legal custodian. Attorneys shall be appointed by the court if the family cannot afford one. If the department is the guardian of the child, the court shall appoint a guardian who is not the department.

d. The child and his or her legal custodian have the right to confront and cross-examine witnesses, offer evidence, subpoena witnesses and require testimony from the evaluating physician.

e. The child or his or her legal custodian may request a continuance for a reasonable time for good cause shown.

f. The burden of proof is upon the party seeking treatment for the child. The standard of proof shall be by clear and convincing evidence.

g. The child and his or her legal custodian may waive the child's right to be present at the hearing at the discretion of the court.

h. After a hearing or, if the hearing is waived, after a full review of the evidence, if the court is satisfied that an immediate evaluation is necessary, the court shall issue an order to any peace officer to deliver the child forthwith to the evaluating facility.

5. Determination of involuntary treatment

a. In any case where a child may be retained at a facility beyond the evaluation period, where voluntary hospitalization is not sought, the chief medical officer, supported with the opinions of two physicians who have personally examined the child within the preceding five days, shall file a petition with the court for a hearing to determine whether or not the child is a mentally ill child requiring involuntary treatment. O.C.G.A. §37-3-81(a).

(NOTE: The determination of involuntary treatment hearing shall be held no sooner than seven days and no later than twelve days after the petition was filed with the court. O.C.G.A. §37-3-81(c).)

6. Order for involuntary treatment

a. If the court determines that the child is not a mentally ill child requiring involuntary treatment, the court shall enter an order that the child be immediately discharged. O.C.G.A. §37-3-81.1(a)(1).

b. If the court finds that the child is a mentally ill child requiring involuntary treatment, the court should further determine whether the child should receive inpatient or outpatient care based on the individualized service plan. O.C.G.A. §37-3-81.1(a).

(NOTE: There must be an individualized service plan for the child's treatment submitted under the direction of the Chief Medical Officer of the treatment facility or no order can be granted by the juvenile court judge.)

c. In determining whether a child should receive outpatient care, the court should consider:

(i) Whether there is available outpatient treatment which meets the requirements of the individualized service plan. O.C.G.A. §37-3-81(a); and

(ii) Whether the child will likely obtain that treatment so as to minimize the likelihood of the child's becoming an inpatient. O.C.G.A. §37-3-81.1(a)(2).

(NOTE: If the child meets these two requirements, the juvenile court may order outpatient treatment and conditional discharge.)

d. If the child fails to meet the requirements of O.C.G.A. §37-3-81.1(a)(2) and the court determines that the least restrictive alternative is hospitalization, then the child should receive inpatient treatment. O.C.G.A. §37-3-81(a)(3).

e. If the court considers the mentally ill child to be an inpatient, then the court shall order the child to be transported as in O.C.G.A. §37-3-101 to a treatment facility where the child shall be admitted for care and treatment.

f. If the court finds, based upon the evidence, that the accomplishment of the treatment goals for the child requires hospitalization for a limited period and then outpatient care, the court shall so order. O.C.G.A. §37-3-81.1(a)(4).

7. Time limits on involuntary treatment

a. The court may order inpatient treatment for any period not to exceed six months. O.C.G.A. §37-3-81.1(c). The court may also order the child to obtain available outpatient treatment for any period not to exceed one year, but the total period of involuntary treatment, including inpatient treatment, shall not exceed one year. O.C.G.A. §37-3-93(a).

b. If it is necessary to continue involuntary treatment of a hospitalized child beyond the end of the period during which the treatment facility is currently authorized under Chapter 3 of Title 37 to retain the child, the chief medical officer prior to the expiration of the period shall seek an order authorizing such continued treatment in the manner provided in O.C.G.A. §37-3-83. The chief medical officer may seek such an order authorizing continued involuntary treatment involving inpatient treatment, outpatient treatment, or both under the procedures of O.C.G.A. §37-3-83 and O.C.G.A. §37-3-93. O.C.G.A. §37-3-83(a).

c. If the chief medical officer finds that continued involuntary treatment is necessary for a child who was hospitalized while under the jurisdiction of a juvenile court but who is about to reach the age of 17, the chief medical officer shall seek an order authorizing such continued treatment in the manner provided in O.C.G.A. §37-3-83 and Chapter 3 of Title 37 shall apply fully to such a child after that time. O.C.G.A. §37-3-83(b).

8. Appeal

The child, his or her representatives, or the child's attorney may appeal any order of the juvenile court rendered in a proceeding under Chapter 3 of Title 37 to the Court of Appeals and the Supreme Court. The appeal from the order of the juvenile court to the Court of Appeals and the Supreme Court shall be as provided by law but shall be heard as expeditiously as possible. The **child** must pay all costs upon filing any appeal authorized under O.C.G.A. §37-3-150 or must make an affidavit that he or she is unable to pay costs. The child shall retain all rights of review of any order of the Court of Appeals and the Supreme Court as provided by law. The child shall have a right to counsel, or if unable to afford counsel, shall have counsel appointed for him or her by the court. O.C.G.A. §37-3-150.

D. Definitions

1. "Mentally ill person requiring involuntary treatment" means a child who is mentally ill and:

a. who presents a substantial risk of imminent harm to himself or herself or to others as manifested by either recent overt acts or recent expressed threats of violence which present a probability of physical injury to himself or herself or to other persons, or

b. who is so unable to care for his or her own physical health and safety as to create an imminently life-endangering crisis. O.C.G.A. §37-3-1(9.1).

2. "Chief medical officer" means the physician with overall responsibility for patient treatment at any facility receiving patients under Chapter 3 of Title 37 or a physician appointed in writing as the designee of such chief medical officer. O.C.G.A. §37-3-1(1).

3. "Individualized service plan" means a proposal developed during a child's stay in a facility and which is specifically tailored to the individual child'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 the child's involvement and, if applicable, the child'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 child's home community. O.C.G.A. §37-3-1(9).

4. "Patient representatives" consist of two individuals, one designated by the child and one designated by the receiving facility. In the absence of a designation by the child, both representatives shall be selected by the receiving facility. If the facility selects both representatives, one of the representatives must be, in order of preference, the child's legal guardian, spouse, parent, attorney, next of kin or adult friend. The representative must be chosen in accordance with any representative appointed by the court pursuant to O.C.G.A. §37-3-62. The second representative shall also be selected from the list, without regard to order of preference, provided the representative is not the petitioner. If the Department of Human Resources is the guardian of the child, the facility shall apply for the appointment of a guardian ad litem who is not the Department. The names and addresses of the representatives shall be entered in the child's clinical record and they are entitled to such notice as required by Title 37 of the Official Code of Georgia. O.C.G.A. §37-3-147.