

House Bill 377

By: Representatives Schofield of the 60th, Cooper of the 43rd, Cannon of the 58th, Beverly of the 143rd, Dreyer of the 59th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 4 of Title 17 of the Official Code of Georgia Annotated,
2 relating to arrest by law enforcement officers generally, so as to revise provisions relating
3 to the arrests of pregnant women; to provide that women who have been arrested are offered
4 pregnancy testing upon detention; to enact a provision regarding delayed sentencing for
5 postpartum female inmates; to amend Article 1 of Chapter 1 of Title 42 of the Official Code
6 of Georgia Annotated, relating to inmate policies, so as to revise provisions relating to the
7 treatment of pregnant and postpartum female inmates; to provide for the reporting of certain
8 information; to provide for a short title; to provide for related matters; to repeal conflicting
9 laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **PART I**
12 **SECTION 1-1.**

13 This Act shall be known and may be cited as the "Georgia Women's Care (Child Care
14 Alternatives, Resources, and Education) Act."

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15 **SECTION 1-2.**

16 Article 2 of Chapter 4 of Title 17 of the Official Code of Georgia Annotated, relating to
17 arrest by law enforcement officers generally, is amended by revising Code Section 17-4-26,
18 relating to duty to bring persons arrested before judicial officer within 72 hours, notice to
19 accused of time and place of commitment hearing, and effect of failure to notify, as follows:

20 "17-4-26.

21 (a) Every law enforcement officer arresting under a warrant shall exercise reasonable
22 diligence in bringing the person arrested before the judicial officer authorized to examine,
23 commit, or receive bail and in any event to present the person arrested before a committing
24 judicial officer within 72 hours after arrest. The accused shall be notified as to when and
25 where the commitment hearing is to be held. An arrested person who is not notified before
26 the hearing of the time and place of the commitment hearing shall be released.

27 (b) Every woman arrested who is not released on bond within 72 hours of arrest shall
28 submit to pregnancy testing protocols of the facility. Pregnancy testing shall include urine,
29 blood, ultrasound scan, or other standard pregnancy testing protocols of the facility."

30 **PART II**31 **SECTION 2-1.**

32 Article 1 of Chapter 1 of Title 42 of the Official Code of Georgia Annotated, relating to
33 inmate policies, is amended by revising Code section 42-1-11.3, relating to treatment of
34 pregnant and postpartum female inmates, as follows:

35 "42-1-11.3.

36 (a) As used in this Code section, the term:

37 (1) 'Custodian' means warden, sheriff, jailer, deputy sheriff, police officer, or any other
38 law enforcement officer.

39 (2) 'Immediate postpartum period' means the six-week period following childbirth,
40 unless extended by a physician because of complications.

41 (3) 'Officer in charge' means the individual who is responsible for the supervision of a
42 penal institution.

43 (4) 'Penal institution' means any place of confinement for juvenile or adult individuals
44 accused of, convicted of, or adjudicated for violating a law of this state or an ordinance
45 of a political subdivision of this state.

46 (5) 'Pregnant woman' means a woman whose pregnancy has been verified by a
47 pregnancy test or through a medical examination conducted by a physician.

48 (6) 'Woman' means a juvenile or adult female who is confined in a penal institution.

49 (b) A pregnant woman shall not be required to squat or cough during a strip search
50 conducted by a custodian during the second or third trimester of pregnancy.

51 (c) A pregnant woman shall not be required to undergo any vaginal examination unless
52 prescribed and performed by a licensed health care professional.

53 (d)(1) Except as otherwise provided in this subsection and notwithstanding Code
54 Section 42-5-58, a custodian shall not use handcuffs, waist shackles, leg irons, or
55 restraints of any kind on a pregnant woman who is in the second or third trimester of
56 pregnancy, in labor, or in delivery, or on a woman in the immediate postpartum period.

57 (2) A woman who is in the immediate postpartum period may only be restrained with the
58 use of wrist handcuffs with her wrists held in front of her body and only if there are
59 compelling grounds to believe that such woman presents:

60 (A) An immediate and serious threat of harm to herself, staff, or others; or

61 (B) A substantial flight risk and cannot be reasonably contained by other means.

62 (3) If a custodian uses wrist handcuffs on a woman who is in the immediate postpartum
63 period under an exception provided in paragraph (2) of this subsection, the circumstances
64 for and details of such exception shall be documented within two days of the incident.
65 Such information shall include the nature of the circumstances and the length of time of

66 such use of restraints. The documentation shall be reviewed by the officer in charge and
67 retained by the penal institution for reporting purposes.

68 (4) Nothing in this subsection shall prohibit the use of medical restraints by a licensed
69 health care professional to ensure the medical safety of a pregnant woman.

70 (e) A pregnant woman or woman who is in the immediate postpartum period shall not be
71 placed in solitary confinement, in administrative segregation, or for medical observation
72 in a solitary confinement setting; provided, however, that this shall not prevent the
73 placement of such woman in a cell or hospital room by herself.

74 (f)(1) At the time of sentencing, a judge shall determine if a pregnant woman, sentenced
75 to a period confinement in a penal institution, shall be eligible to have such sentence
76 deferred until 12 weeks post delivery, unless denied by another judge or declined by the
77 pregnant woman. During such deferred time, the offender shall maintain perinatal health
78 care, treatment, and assessments and shall participate in education and resource programs.
79 The pregnant woman shall report to the Department of Community Supervision biweekly
80 via phone and check in through a computer link to the department, providing
81 confirmation of perinatal health care, treatment, and assessments, as well as participation
82 in education and resource programs. If the court finds that the offender is not compliant
83 with perinatal health care requirements, the court may rescind the deferred sentence and
84 order confinement immediately.

85 (2) Such assessments and treatments may utilize community support services, licensed
86 health care professionals, social programs, and local and state government agencies,
87 including, but not limited to, nonprofit organizations and the Department of Human
88 Services in providing necessary care.

89 (3) If a pregnant woman experiences early termination of pregnancy for any reason, the
90 woman shall report the termination to the Department of Community Supervision
91 within 24 hours and self-surrender in accordance with the instructions provided.

92 (4) If a pregnant woman violates any condition of the Georgia Women's CARE Act, she
93 must immediately self-surrender to the nearest penal institution.

94 (g) Commencing January 1, 2022, and annually thereafter, penal institutions shall report
95 to the Department of Public Health the following:

96 (1) Data collected pursuant to subsection (f) of this Code section;

97 (2) Total number of women who were incarcerated;

98 (3) Total number of pregnant women; and

99 (4) Total number of women who declined deferred sentencing.

100 (h) The report provided pursuant to subsection (g) of this Code section shall exclude
101 patient identifying information and shall be compliant with state and federal laws regarding
102 confidentiality including the requirements of the federal Health Insurance Portability and
103 Accountability (HIPAA) of 1996.

104 (i) It is the intent of the General Assembly that a pregnant woman who is temporarily held
105 in a county jail pending transfer to a state penal institution be transferred as expeditiously
106 as possible. The Department of Corrections and a sheriff overseeing a county jail in which
107 a pregnant woman is incarcerated shall make all reasonable efforts to facilitate such
108 transfer. This subsection shall not apply to a pregnant woman who has been sentenced to
109 a county jail by a judge."

110

PART III

111

SECTION 3-1.

112 All laws and parts of laws in conflict with this Act are repealed.