

The House Committee on Health and Human Services offers the following substitute to HB 377:

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 amend Code Section 31-2A-16 of the Official
9 Code of Georgia Annotated, relating to the establishment of the Maternal Mortality Review
10 Committee, so as to require health care providers, health care facilities, and pharmacies to
11 provide access to records within 30 days of request; to provide for related matters; to repeal
12 conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 377 (SUB)

PART I**SECTION 1-1.**

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

SECTION 1-2.

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

23 "17-4-26.

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

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

PART II**SECTION 2-1.**

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

38 "42-1-11.3.

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

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

42 (2) 'Immediate postpartum period' means the six-week period following childbirth,
43 unless extended by a physician ~~due to~~ because of complications.

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

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

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

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

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

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

56 (d)(1) Except as otherwise provided in this subsection and notwithstanding Code
57 Section 42-5-58, a custodian shall not use handcuffs, waist shackles, leg irons, or

58 restraints of any kind on a pregnant woman who is in the second or third trimester of
59 pregnancy, in labor, or in delivery, or on a woman in the immediate postpartum period.

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

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

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

65 (3) If a custodian uses wrist handcuffs on a woman who is in the immediate postpartum
66 period under an exception provided in paragraph (2) of this subsection, the circumstances
67 for and details of such exception shall be documented within two days of the incident.
68 Such information shall include the nature of the circumstances and the length of time of
69 such use of restraints. The documentation shall be reviewed by the officer in charge and
70 retained by the penal institution for reporting purposes.

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

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

77 (f)(1) At the time of sentencing, if a judge determines that a pregnant woman is
78 sentenced to a period of confinement in a penal institution, the pregnant woman shall
79 have such sentence deferred until six weeks post delivery unless denied by a judge due
80 to imposed safety risks or declined by the pregnant woman. During such deferred time,
81 the offender shall maintain perinatal health care, treatment, and assessments and shall
82 participate in education and resource programs. The pregnant woman shall report to the
83 Department of Community Supervision monthly via phone and check in through a
84 computer link to the department, providing confirmation of perinatal health care contact

85 information, as well as contact information of participation in education and resource
86 programs. If the court finds that the offender is not compliant with perinatal health care
87 requirements, the court may rescind the deferred sentence and order confinement
88 immediately.

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

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

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

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

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

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

102 (3) Total number of pregnant women; and

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

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

108 (i) It is the intent of the General Assembly that a pregnant woman who is temporarily held
109 in a county jail pending transfer to a state penal institution be transferred as expeditiously
110 as possible. The Department of Corrections and a sheriff overseeing a county jail in which
111 a pregnant woman is incarcerated shall make all reasonable efforts to facilitate such

112 transfer. This subsection shall not apply to a pregnant woman who has been sentenced to
113 a county jail by a judge."

114 **PART III**
115 **SECTION 3-1.**

116 Code Section 31-2A-16 of the Official Code of Georgia Annotated, relating to the
117 establishment of the Maternal Mortality Review Committee, is amended by revising
118 subsection (d) as follows:

119 "(d)(1) Health care providers licensed pursuant to Title 43, health care facilities licensed
120 pursuant to Chapter 7 of Title 31, and pharmacies licensed pursuant to Chapter 4 of Title
121 26 shall provide reasonable access to the committee to all relevant medical records
122 associated with a case under review by the committee within 30 days of receiving a
123 request for such records.

124 (2) A health care provider, health care facility, or pharmacy providing access to medical
125 records pursuant to this Code section shall not be held liable for civil damages or be
126 subject to any criminal or disciplinary action for good faith efforts in providing such
127 records."

128 **PART IV**
129 **SECTION 4-1.**

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