

_____ 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:

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PART I
SECTION 2-1.

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

SECTION 1-2.

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

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

(b) Every woman arrested who is not released on bond within 72 hours of arrest shall be provided a urine pregnancy test unless such test is declined by the woman.

"The results of such test shall be used solely for the purposes of determining pregnancy."

If such test is "positive" for pregnancy the woman must be released unless the woman poses a significant threat or danger to any person or declined by the woman.

PART II
SECTION 3-1.

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

"42-1-11.3.

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

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

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

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

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

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

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

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

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

(d)(1) Except as otherwise provided in this subsection and notwithstanding Code 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 twelve weeks post delivery unless denied by a judge
80 because the pregnant woman poses a significant threat or danger to any person
81 or declined by the pregnant woman. During such deferred time, the **pregnant woman**
82 shall maintain perinatal health care, treatment, and assessments and shall participate
83 in education and resource programs. The pregnant woman shall report to the sentencing
84 judge monthly via phone and check in through a computer link to the sentencing
85 court, providing confirmation of perinatal health care contact information, as well as

86 contact information of participation in education and resource programs.

87 If the court finds that the **pregnant woman** is not compliant with perinatal health care
88 requirements, the court may rescind the deferred sentence and order confinement
89 immediately. (2) Such assessments and treatments may utilize community support
90 services, licensed health care professionals, social programs, and local and state
91 government agencies, including, but not limited to, nonprofit organizations and
92 the Department of Human Services in providing necessary care.

93 (3) If a pregnant woman experiences a **loss** of pregnancy for any
94 reason, the woman shall report the **loss** to the sentencing judge within
95 **72 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 (b), (f) of this Code section;

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

102 (3) Total number of pregnant women;

103 (4) Total number of women who declined pregnancy testing; and

104 (5) Total number of women who declined deferred sentencing.

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

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

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

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

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

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

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

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

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