

The Senate Committee on Health and Human Services offered the following substitute to HB 345:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 1 of Title 42 of the Official Code of Georgia Annotated,
2 relating to inmate policies, so as to provide for prohibited practices relating to a pregnant
3 female inmate or a female inmate who is in the immediate postpartum period; to provide for
4 definitions; to prohibit certain actions relating to strip searches, restraints, examinations,
5 labor and delivery, solitary confinement, and transfer; to provide for documentation and
6 annual reporting of certain information; to provide for related matters; to provide an effective
7 date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 1 of Chapter 1 of Title 42 of the Official Code of Georgia Annotated, relating to
11 inmate policies, is amended by adding a new Code section to read as follows:

12 "42-1-11.3.

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

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

16 (2) 'Immediate postpartum period' means the six-week period following childbirth unless
17 extended by a physician due to complications.

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

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

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

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

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

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

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

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

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

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

39 (3) If a custodian uses wrist handcuffs on a woman who is in the immediate postpartum
40 period under an exception provided in paragraph (2) of this subsection, the circumstances
41 for and details of such exception shall be documented within two days of the incident.

42 Such information shall include the nature of the circumstances and the length of time of
43 such use of restraints. The documentation shall be reviewed by the officer in charge and
44 retained by the penal institution for reporting purposes.

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

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

51 (f) It is the intent of the General Assembly that a pregnant woman who is temporarily held
52 in a county jail pending transfer to a state penal institution be transferred as expeditiously
53 as possible. The Department of Corrections and a sheriff overseeing a county jail in which
54 a pregnant woman is incarcerated shall make all reasonable efforts to facilitate such
55 transfer. This subsection shall not apply to a pregnant woman who has been sentenced to
56 a county jail by a judge.

57 (g) By October 1, 2020, and annually thereafter, penal institutions operated by the state
58 shall report to the Department of Public Health the following:

59 (1) Data collected pursuant to paragraph (3) of subsection (d) of this Code section;

60 (2) Total number of women in custody;

61 (3) Total number of pregnant women in custody;

62 (4) Total number of births, including the number of live births and stillbirths, and the
 63 gestational age and birth weight of each infant at the time of birth or stillbirth; and

64 (5) Number and type of maternal complications.

65 (h) By October 1, 2020, and annually thereafter, county jails operated by a sheriff shall
 66 report to the Georgia Sheriffs' Association such information as determined by the Georgia
 67 Sheriffs' Association, including, but not limited to:

68 (1) Total number of women in custody;

69 (2) Total number of pregnant women in custody; and

70 (3) Total number of births while in custody.

71 The Georgia Sheriffs' Association shall, in turn, report such information to the Department
 72 of Public Health.

73 (i) Commencing November 1, 2020, the Department of Public Health, the Department of
 74 Corrections, the Department of Juvenile Justice, and the Georgia Sheriffs' Association shall
 75 jointly provide to the House Committee on Health and Human Services and the Senate
 76 Health and Human Services Committee an annual report for the prior year detailing, for
 77 each penal institution, the:

78 (1) Data collected pursuant to paragraph (3) of subsection (d) of this Code section;

79 (2) Total number of women in custody;

80 (3) Total number of pregnant women in custody;

81 (4) Total number of births, including the number of live births and stillbirths, and the
 82 gestational age and birth weight of each infant at the time of birth or stillbirth; and

83 (5) Number and type of maternal complications.

84 (j) The reports provided in subsections (g), (h), and (i) of this Code section shall exclude
 85 patient identifying information and shall be compliant with state and federal laws regarding
 86 confidentiality."

87 **SECTION 2.**

88 This Act shall become effective on October 1, 2019.

89 **SECTION 3.**

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