

Senate Bill 372

By: Senators Tillery of the 19th, Burke of the 11th, Miller of the 49th, Watson of the 1st and Kirkpatrick of the 32nd

A BILL TO BE ENTITLED
AN ACT

1 To amend various titles of the Official Code of Georgia Annotated so as to modernize,
2 clarify, and update provisions relating to public health; to eliminate certain councils and
3 committees; to amend Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia
4 Annotated, relating to procedure for sentencing and imposition of punishment, so as to revise
5 a provision regarding the requirement of defendants to submit to HIV tests for AIDS
6 transmitting crimes; to amend Article 2 of Chapter 3 of Title 19 of the Official Code of
7 Georgia Annotated, relating to license and ceremony for marriage generally, so as to
8 authorize but not require the Department of Public Health to promulgate rules and
9 regulations regarding premarital fact sheets; to amend Title 31 of the Official Code of
10 Georgia Annotated, relating to health, so as to revise provisions regarding the Office of
11 Women's Health; to revise provisions regarding the transfer of vital records to State
12 Archives; to repeal certain provisions regarding the care and treatment of chronic renal
13 disease patients; to revise provisions regarding a petition for order for temporary healthcare
14 placement transfer by healthcare facilities; to amend various titles of the Official Code of
15 Georgia Annotated so as to update terminology relating to sexually transmitted diseases; to
16 provide for related matters; to repeal conflicting laws; and for other purposes.

17 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

18 **SECTION 1.**

19 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
20 procedure for sentencing and imposition of punishment, is amended by revising Code
21 Section 17-10-15, relating to AIDS transmitting crimes, requiring defendant to submit to an
22 HIV test, and report of results, as follows:

23 "17-10-15.

24 (a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have
25 the meaning provided for such term in Code Section 31-22-9.1.

26 (b) A victim or the parent or legal guardian of a minor or incompetent victim of a sexual
 27 offense as defined in Code Section 31-22-9.1 or other crime which involves significant
 28 exposure as defined by subsection ~~(g)~~(f) of this Code section may request that the agency
 29 responsible for prosecuting the alleged offense request that the person arrested for such
 30 offense submit to a test for the human immunodeficiency virus and consent to the release
 31 of the test results to the victim. If the person so arrested declines to submit to such a test,
 32 the judge of the superior court in which the criminal charge is pending, upon a showing of
 33 probable cause that the person arrested for the offense committed the alleged crime and that
 34 significant exposure occurred, may order the test to be performed in compliance with the
 35 rules adopted by the Department of Public Health. The cost of the test shall be borne by
 36 the victim or by the arrested person, in the discretion of the court.

37 (c) Upon a verdict or plea of guilty or a plea of nolo contendere to any AIDS transmitting
 38 crime, the court in which that verdict is returned or plea entered shall require the defendant
 39 in such case to submit to an HIV test within 45 days following the date of such verdict or
 40 plea. ~~The clerk of the court in such case shall mail, within three days following the date~~
 41 ~~of that verdict or plea, a copy of that verdict or plea to the Department of Public Health.~~

42 ~~(d) The Department of Public Health, within 30 days following receipt of the court's order~~
 43 ~~under subsection (b) of this Code section or within 30 days following receipt of the copy~~
 44 ~~of the verdict or plea under subsection (c) of this Code section, shall arrange for the HIV~~
 45 ~~test for the person required to submit thereto.~~

46 ~~(e)~~(d) Any person required under this Code section to submit to the HIV test who fails or
 47 refuses to submit to the test ~~arranged pursuant to subsection (d) of this Code section~~ shall
 48 be subject to such measures deemed necessary by the court in which the order was entered,
 49 verdict was returned, or plea was entered to require involuntary submission to the HIV test,
 50 and submission thereto may also be made a condition of suspending or probating any part
 51 of that person's sentence for the AIDS transmitting crime.

52 ~~(f)~~(e) If a person is required by this Code section to submit to an HIV test and is thereby
 53 determined to be infected with HIV, that determination and the name of the person shall
 54 be reported to:

55 (1) The Department of Public Health, which shall disclose the name of the person as
 56 necessary to provide counseling to each victim of that person's AIDS transmitting crime
 57 if that crime is other than one specified in subparagraph (a)(3)(J) of Code Section
 58 31-22-9.1 or to any parent or guardian of any such victim who is a minor or incompetent
 59 person;

60 (2) The court which ordered the HIV test, which court shall make that report a part of
 61 that person's criminal record. That report shall be sealed by the court; and

62 (3) The officer in charge of any penal institution or other facility in which the person has
 63 been confined by order or sentence of the court for purposes of enabling that officer to
 64 confine the person separately from those not infected with HIV.

65 ~~(g)~~(f) For the purpose of subsection (b) of this Code section, 'significant exposure' means
 66 contact of the victim's ruptured or broken skin or mucous membranes with the blood or
 67 body fluids of the person arrested for such offense, other than tears, saliva, or perspiration,
 68 of a magnitude that the Centers for Disease Control and Prevention have epidemiologically
 69 demonstrated can result in transmission of the human immunodeficiency virus.

70 ~~(h)~~(g) The state may not use the fact that a medical procedure or test was performed on a
 71 person under this Code section or use the results of the procedure or test in any criminal
 72 proceeding arising out of the alleged offense."

73

SECTION 2.

74 Article 2 of Chapter 3 of Title 19 of the Official Code of Georgia Annotated, relating to
 75 license and ceremony for marriage generally, is amended by revising Code Section
 76 19-3-41.1, relating to fact sheet for distribution by premarital education providers,
 77 requirements, and regulations, as follows:

78 "19-3-41.1.

79 (a) The Department of Public Health shall prepare a fact sheet for public availability and
 80 for distribution by premarital education providers. The Department of Public Health shall
 81 make such fact sheet available in electronic form, including, but not limited to, a version
 82 that can be legibly printed in a poster size of up to 24 by 36 inches.

83 (b) The fact sheet provided for in subsection (a) of this Code section shall:

84 (1) Include basic information about the legal rights and responsibilities of parties to a
 85 marriage as well as information about dating violence, sexual assault, stalking, domestic
 86 violence, and human trafficking, including, but not limited to, the warning signs and
 87 behaviors of an abusive partner and the dynamics of domestic violence and other forms
 88 of coercive control. Such fact sheet shall also include basic information about the rights
 89 of victims of such violence and the resources available to them, including, but not limited
 90 to, website and telephone resources, legal assistance, confidential shelters, and civil
 91 protective orders; and

92 (2) Be developed in partnership with the Georgia Commission on Family Violence and
 93 any other agencies in the discretion of the Department of Public Health that serve
 94 survivors of dating violence, sexual assault, and human trafficking.

95 ~~(c) The Department of Public Health shall promulgate rules and regulations to implement~~
 96 ~~this Code section."~~

97

SECTION 3.

98 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising
99 Code Section 31-2A-5, relating to the Office of Women's Health, as follows:

100 "31-2A-5.

101 (a) There is created in the department the Office of Women's Health. ~~Attached to the~~
102 ~~office shall be an 11 member advisory council. The members of the advisory council shall~~
103 ~~be appointed by the Governor and shall be representative of major public and private~~
104 ~~agencies and organizations in the state and shall be experienced in or have demonstrated~~
105 ~~particular interest in women's health issues. Each member shall be appointed for two years~~
106 ~~and until his or her successor is appointed. The members shall be eligible to succeed~~
107 ~~themselves. The council shall elect its chairperson from among the councilmembers for~~
108 ~~a term of two years. The Governor may name an honorary chairperson of the council.~~

109 (b) The Office of Women's Health shall serve in an advisory capacity to the Office of
110 Health Strategy and Coordination. In particular, the office shall:

111 (1) Raise awareness of women's nonreproductive health issues;

112 (2) Raise awareness of women's reproductive health issues;

113 ~~(2)(3)~~ (3) Inform and engage in prevention and education activities relating to women's
114 nonreproductive health issues; and

115 ~~(3)(4)~~ (4) Serve as a clearing-house for women's health information for purposes of planning
116 and coordination;

117 ~~(4)~~ (5) ~~Issue reports of the office's activities and findings; and~~

118 ~~(5) Develop and distribute a state comprehensive plan to address women's health issues.~~

119 ~~(c) The council shall meet upon the call of its chairperson, the board, or the commissioner.~~

120 ~~(d) The Office of Women's Health, no later than October 1, 2019, and annually thereafter,~~
121 ~~shall submit to the Office of Health Strategy and Coordination a report of its findings and~~
122 ~~recommendations."~~

123

SECTION 4.

124 Said title is further amended in Code Section 31-10-25, relating to disclosure of information
125 contained in vital records and transfer of records to State Archives, by revising subsection
126 (e) as follows:

127 "(e) When ~~100~~ 125 years have elapsed after the date of birth or ~~75~~ 100 years have elapsed
128 after the date of death or application for marriage, or divorce, dissolution of marriage, or
129 annulment, the records of these events in the custody of the state registrar shall be
130 transferred to the State Archives and such information shall be made available in
131 accordance with regulations which shall provide for the continued safekeeping of the
132 records."

133 **SECTION 5.**

134 Said title is further amended by revising Chapter 16, relating to care and treatment of chronic
 135 renal disease patients, as follows:

136 **"CHAPTER 16**137 ~~31-16-1.~~

138 ~~(a) It is declared and found that one of the most serious and tragic problems facing the~~
 139 ~~public health and welfare is the death of hundreds of persons in this state every year from~~
 140 ~~chronic renal disease, although the present state of medical arts and technology could~~
 141 ~~return these persons to a socially productive life. Advances and discoveries in the~~
 142 ~~treatment of patients suffering from chronic renal disease now allow not mere survival but~~
 143 ~~rehabilitation of these patients to their normal occupations and activities. Presently, these~~
 144 ~~patients are dying for lack of personal financial resources to pay for the expensive~~
 145 ~~equipment and care which they need.~~

146 ~~(b) The state recognizes its responsibilities to allow its citizens to keep their health without~~
 147 ~~being pauperized and to use its resources and organization to aid in gathering and~~
 148 ~~disseminating information on the treatment of chronic renal disease. It is believed that~~
 149 ~~these programs will, by making treatment of chronic renal disease easily available, steadily~~
 150 ~~lower the cost of such treatment.~~

151 ~~31-16-2.~~

152 ~~The Department of Public Health shall establish a program for the prevention, control, and~~
 153 ~~treatment of kidney disease which shall include the care of patients suffering from chronic~~
 154 ~~kidney failure who require lifesaving therapy but are unable to pay for such services on a~~
 155 ~~continuing basis.~~

156 ~~31-16-3.~~

157 ~~(a) The commissioner of public health shall appoint a Kidney Disease Advisory~~
 158 ~~Committee, hereinafter referred to as KDAC, to advise the department in the administration~~
 159 ~~of this chapter. The KDAC shall recommend priorities and relative budgets for the various~~
 160 ~~purposes of this chapter as described below.~~

161 ~~(b) The KDAC shall consist of 15 members appointed by the commissioner as follows:~~

162 ~~(1) Four members shall be appointed by the commissioner from a list of eight names~~
 163 ~~submitted to him by the presidents of the medical colleges located within Georgia, both~~
 164 ~~public and private, and at least one such member shall be appointed from each of the~~
 165 ~~medical colleges located within Georgia;~~

166 ~~(2) Two members shall be appointed by the commissioner from a list of four names~~
167 ~~submitted to him by the chief executive officers of the hospitals located within Georgia~~
168 ~~which provide chronic dialysis and kidney transplantation services;~~
169 ~~(3) One member shall be appointed by the commissioner from a list of two names~~
170 ~~submitted to him by the Medical Association of Georgia, and one member shall be~~
171 ~~appointed by the commissioner from a list of two names submitted to him by the Georgia~~
172 ~~State Medical Association;~~
173 ~~(4) One member shall be appointed by the commissioner from a list of two names~~
174 ~~submitted to him by the Kidney Foundation of Georgia;~~
175 ~~(5) One member shall be appointed by the commissioner from a list of two names~~
176 ~~submitted to him by the Georgia Claims Association and the Health Insurance Council;~~
177 ~~(6) One member shall be appointed by the commissioner from a list of two names~~
178 ~~submitted to him by the director of the Georgia Vocational Rehabilitation Agency; and~~
179 ~~(7) Four members shall be selected by the commissioner from the general public.~~
180 ~~(c) The persons whose names are submitted to the commissioner by the medical colleges,~~
181 ~~the hospitals, the Medical Association of Georgia, and the Georgia State Medical~~
182 ~~Association shall all be physicians licensed to practice medicine under the laws of Georgia,~~
183 ~~and the persons whose names are submitted by the Medical Association of Georgia shall~~
184 ~~be actively engaged in the practice of medicine.~~
185 ~~(d) The commissioner shall appoint members for terms such that the terms of four~~
186 ~~members shall expire each year, except that every fourth year the terms of three members~~
187 ~~shall expire, in such manner that after the initial terms all members will serve for terms of~~
188 ~~four years and until their successors are elected and qualified. In making initial~~
189 ~~appointments, the commissioner shall adjust initial terms so as to achieve the staggered~~
190 ~~terms specified by the preceding sentence. In the event of a vacancy for any reason, the~~
191 ~~commissioner shall fill said vacancy for the unexpired term in the same manner that other~~
192 ~~appointments are made.~~
193 ~~(e) The KDAC shall meet as often as the commissioner deems necessary but not less than~~
194 ~~twice each year. The members of the KDAC shall receive no compensation for their~~
195 ~~services but shall be reimbursed for actual and necessary expenses incurred by them in~~
196 ~~carrying out their duties as members thereof.~~
197 ~~(f) The KDAC shall prepare and submit a complete and detailed report no later than~~
198 ~~October 1, 2019, and annually thereafter, to the Office of Health Strategy and Coordination~~
199 ~~concerning the impact of the program established pursuant to Code Section 31-16-2 on the~~
200 ~~treatment of chronic renal disease and the cost of such treatment.~~

201 ~~31-16-4.~~

202 ~~The commissioner shall provide staff to carry out administration of this program including,~~
 203 ~~but not limited to, consultant physicians, administrative assistants, and clerical support.~~

204 ~~31-16-5.~~

205 ~~The commissioner, with the advice of the KDAC, shall:~~

206 ~~(1) Develop standards for determining eligibility of patients for care and treatment under~~
 207 ~~this program and set physical and medical standards for the operation of dialysis and~~
 208 ~~kidney transplantation centers. When such centers meet the standards, they shall be~~
 209 ~~certified by the department. Patients treated at uncertified centers shall not be eligible for~~
 210 ~~state aid for their treatment; and~~

211 ~~(2) Extend financial aid to persons suffering from chronic renal diseases to enable them~~
 212 ~~to obtain the medical, nursing, pharmaceutical, and technical services necessary in caring~~
 213 ~~for such diseases, including the provision of home dialysis equipment or expenses in~~
 214 ~~obtaining organs for transplantation, or both. Criteria and procedures for financial aid~~
 215 ~~will be developed by the department.~~

216 ~~31-16-6.~~

217 ~~Nothing in this chapter shall be construed to exclude patients with kidney disease from the~~
 218 ~~benefits of any program of state or federal aid for which they might otherwise qualify.~~

219 ~~31-16-7.~~ 31-16-1.

220 (a) The physician and that physician's patient retain the discretion to determine whether
 221 or not a kidney dialyzer should be reused. No licensed kidney dialysis clinic or provider
 222 of kidney dialysis services which is certificated by the state Department of Community
 223 Health may interfere with the exercise of that discretion by:

224 (1) Requiring the reuse of such dialyzer over the objection of that physician and patient;
 225 or

226 (2) Discriminating against a physician specializing in the practice of nephrology by
 227 prohibiting that physician from practicing in such clinic or performing dialysis services
 228 for such provider if that discrimination is based upon that physician's refusal to reuse a
 229 dialyzer and that refusal is based on the patient's informed consent.

230 (b) A provider of kidney dialysis services who is required to comply with subsection (a)
 231 of this Code section but who does not so comply shall have no claim or cause of action for
 232 reimbursement for those services which were rendered without that compliance."

233

SECTION 6.

234 Said title is further amended by revising Code Section 31-36A-7, relating to petition for order
 235 for temporary health care placement transfer by health care facility, as follows:

236 "31-36A-7.

237 (a) In the absence of a person authorized to consent under the provisions of Code Section
 238 31-36A-6, any interested person or persons, including, but not limited to, any authority,
 239 corporation, partnership, or other entity operating the ~~health-care~~ healthcare facility where
 240 the adult who is unable to consent is then present, with or without the assistance of legal
 241 counsel, may petition the probate court for a ~~health-care~~ healthcare placement transfer,
 242 admission, or discharge order. The petition must be verified and filed in the county where
 243 the adult requiring an alternative placement or transfer, admission, or discharge resides or
 244 is found, provided that the probate court of the county where the adult is found shall not
 245 have jurisdiction to grant the order if it appears that the adult was removed to that county
 246 solely for purposes of filing such a petition. The petition shall set forth:

247 (1) The name, age, address, and county of the residence of the adult, if known;

248 (2) The name, address, and county of residence of the petitioner;

249 (3) The relationship of the petitioner to the adult;

250 (4) The current location of the adult;

251 (5) A physician's certification pursuant to Code Section 31-36A-5;

252 (6) The absence of any person to consent to such transfer, admission, or discharge as
 253 authorized by the provisions of Code Section 31-36A-6;

254 (7) Name and address of the recommended alternative ~~health-care~~ healthcare facility or
 255 placement; and

256 (8) A statement of the reasons for such transfer, admission, or discharge as required by
 257 subsections (b) and (c) of this Code section.

258 (b) The petition shall be supported by the affidavit of an attending physician, treating
 259 physician, or other physician licensed according to the laws of the State of Georgia,
 260 attesting the following:

261 (1) The adult is unable to consent for himself or herself;

262 (2) It is the physician's belief that it is in the adult's best interest to be admitted to or
 263 discharged from a hospital, institution, medical center, or other ~~health-care~~ healthcare
 264 institution providing health or personal care for treatment of any type of physical or
 265 mental condition or to be transferred to an alternative facility or placement, including, but
 266 not limited to, nursing facilities, assisted living communities, personal care homes,
 267 rehabilitation facilities, and home and community based programs; and

268 (3) The identified type of ~~health-care~~ healthcare facility or placement will provide the
 269 adult with the recommended services to meet the needs of the adult and is the most
 270 appropriate, least restrictive level of care available.

271 (c) The petition shall also be supported by the affidavit of the discharging ~~health-care~~
 272 healthcare facility's discharge planner, social worker, or other designated personnel
 273 attesting to and explaining the following:

274 (1) There is an absence of a person to consent to such transfer, admission, or discharge
 275 as authorized in Code Section 31-36A-6;

276 (2) The recommended alternative facility or placement is the most appropriate facility
 277 or placement available that provides the least restrictive and most appropriate level of
 278 care and reasons therefor; and

279 (3) Alternative facilities or placements were considered, including home and community
 280 based placements and available placements, if any, that were in reasonable proximity to
 281 the adult's residence.

282 (d) The court shall review the petition and accompanying affidavits and other information
 283 to determine if all the necessary information is provided to the court as required in
 284 subsections (a), (b), and (c) of this Code section. The court shall enter an instanter order
 285 if the following information is provided:

286 (1) The adult is unable to consent for himself or herself;

287 (2) There is an absence of any person to consent to such transfer, admission, or discharge
 288 as authorized in Code Section 31-36A-6;

289 (3) It is in the adult's best interest to be discharged from a hospital, institution, medical
 290 center, or other ~~health-care~~ healthcare institution or placement providing health or
 291 personal care for treatment for any type of physical or mental condition and to be
 292 admitted or transferred to an alternative facility or placement;

293 (4) The recommended alternative facility or placement is the most appropriate facility
 294 or placement available that provides the least restrictive and most appropriate level of
 295 care; and

296 (5) Alternative facilities or placements were considered, including home and community
 297 based placements and available placements, if any, in reasonable proximity to the adult's
 298 residence.

299 The order shall authorize the petitioner or the petitioner's designee to do all things
 300 necessary to accomplish the discharge from a hospital, institution, medical center, or other
 301 ~~health-care~~ healthcare institution and the transfer to or admission to the recommended
 302 facility or placement.

303 ~~(e) At the same time as issuing the order, the court shall provide a copy of said order to the~~
 304 ~~commissioner of public health.~~

305 ~~(f)~~(e) The order authorizing such transfer, admission, or discharge shall expire upon the
 306 earliest of the following:

307 (1) The completion of the transfer, admission, or discharge and such responsibilities
 308 associated with such transfer, admission, or discharge, including, but not limited to,
 309 assisting with the completion of applications for financial coverage and insurance
 310 benefits for the health or personal care;

311 (2) Upon a physician's certification that the adult is able to understand and make
 312 decisions regarding his or her placements for health or personal care and can
 313 communicate such decisions by any means; or

314 (3) At a time specified by the court not to exceed 30 days from the date of the order.

315 ~~(g)~~(f) The order is limited to authorizing the transfer, admission, or discharge and other
 316 responsibilities associated with such decision, such as authorizing the application for
 317 financial coverage and insurance benefits. It does not include the authority to perform any
 318 other acts on behalf of the adult not expressly authorized in this Code section.

319 ~~(h)~~(g) This Code section shall not repeal, abrogate, or impair the operation of any other
 320 laws, either federal or state, governing the transfer, admission, or discharge of a person to
 321 or from a ~~health care~~ healthcare facility or placement. Further, such person retains all
 322 rights provided under laws, both federal and state, as a result of an involuntary transfer,
 323 admission, or discharge.

324 ~~(i)~~(h) Each certifying physician, discharge planner, social worker, or other hospital
 325 personnel or authorized person who acts in good faith pursuant to the authority of this Code
 326 section shall not be subject to any civil or criminal liability or discipline for unprofessional
 327 conduct."

328 SECTION 7.

329 The Official Code of Georgia Annotated is amended by replacing "venereal" with "sexually
 330 transmitted" wherever the former term occurs in:

331 (1) Code Section 26-3-13, relating to when a drug, device, or cosmetic advertisement
 332 deemed false;

333 (2) Code Section 31-2A-8, relating to Department of Public Health as agency of state for
 334 receipt and administration of federal and other funds;

335 (3) Code Section 31-17-1, relating to enumeration of diseases deemed dangerous to public
 336 health;

337 (4) Code Section 31-17-2, relating to report of diagnosis or treatment to health authorities;

338 (5) Code Section 31-17-3, relating to examination and treatment by health authorities;

339 (6) Code Section 31-17-6, relating to regulation of laboratories;

- 340 (7) Code Section 31-17-7, relating to consent of minor to medical or surgical care or services
341 and informing spouse, parent, custodian, or guardian;
- 342 (8) Code Section 31-21-3, relating to death of person with infectious or communicable
343 disease;
- 344 (9) Code Section 31-26-2, relating to requirement of certificate, application, educational
345 requirements, and issuance, suspension, and revocation; and
- 346 (10) Code Section 42-1-7, relating to notification to transporting law enforcement agency
347 of inmate's or patient's infectious or communicable disease.

348

SECTION 8.

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