

House Bill 1398

By: Representatives Cooper of the 45th, Franklin of the 160th, Frye of the 122nd, Hagan of the 156th, Carpenter of the 4th, 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 within a certain time of detention; to provide limitations on the use and
5 disclosure of such information; to provide for bond; to provide for bond limitations; to amend
6 Article 1 of Chapter 1 of Title 42 of the Official Code of Georgia Annotated, relating to
7 inmate policies, so as to revise provisions relating to the treatment during incarceration of
8 pregnant and postpartum women; to provide for definitions; to establish certain sentencing
9 requirements for pregnant and postpartum women; to provide for reporting; to provide for
10 limitations on the use and disclosure of certain medical information; to provide for related
11 matters; to provide for short titles; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **PART I**

14 **SECTION 1-1.**

15 This Act shall be known and may be cited as the "Georgia Child Care Alternatives,
16 Resources, and Education Act." This Act may also be known and may also be cited as
17 "Trixtian's Law."

18 **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)(1) Every woman arrested who is not released on bond within 72 hours of arrest shall
31 be provided a urine pregnancy test, unless declined by the woman. The results of such
32 test shall be used exclusively for determining appropriate healthcare and for the purposes
33 set forth in paragraph (2) of this subsection; provided, however, that such results shall
34 only be disclosed for such purposes upon the woman's written consent and in compliance
35 with any applicable state and federal laws regarding privacy, including, but not limited
36 to, the provisions of the federal Health Insurance Portability and Accountability Act of
37 1996, P.L. 104-191.

38 (2) If any urine pregnancy test yields a verified positive result, the judicial officer
39 authorized to examine, commit, or receive bail shall consider such result as a factor in
40 determining bail; provided, however, that bail shall not exceed the amount of \$100.00,
41 unless the woman poses a significant threat or danger to any person or to the public
42 welfare."

43 **PART II**

44 **SECTION 2-1.**

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

48 "42-1-11.3.

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

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

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

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

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

59 (5) 'Postpartum woman' means a woman who is within 12 months after giving birth to
60 a child, regardless of the outcome of such birth.

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

63 (7) 'Supervision officer' shall have the same meaning as the term 'probation officer' as
64 set forth in Code Section 15-11-2, 'community supervision officer' as set forth in Code
65 Section 42-3-1, 'private probation officer' as set forth in Code Section 42-8-100, or
66 'probation officer' as set forth in Code Section 42-8-100.

67 ~~(6)~~(8) 'Woman' means a juvenile or an adult human female who is confined in a penal
68 institution.

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

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

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

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

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

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

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

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

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

94 (f) At the time of sentencing a pregnant woman or postpartum woman, the court shall
95 consider such pregnant or postpartum status as a mitigating factor in determining such
96 sentence.

97 (g)(1) At the time of sentencing a pregnant woman, if the court's sentence includes a
98 term of imprisonment and the court has determined that such pregnant woman poses no
99 significant threat or danger to any person or to the public welfare, the court shall defer
100 such term of imprisonment until at least 12 weeks after the birth of the pregnant woman's
101 child. During such period of deferral, the court shall allow the pregnant woman to be
102 supervised on probation for the length of her pregnancy and for at least 12 weeks but up
103 to 12 months after the birth of her child, after which the woman shall surrender herself
104 to the Department of Corrections, as ordered by the court. In addition to any terms and
105 conditions of probation imposed by the court pursuant to Code Section 42-8-35, the court
106 shall impose as a condition of probation that the pregnant woman make good faith efforts
107 to maintain perinatal healthcare, treatment, and assessments and to participate in
108 education and resource programs to the extent such programs are available in her
109 community or through the Department of Human Services, and provide monthly
110 verification of such participation to her supervision officer. The court shall allow such
111 term of probation to be served without the payment of any fines, fees, and restitution and
112 shall allow supervision to be conducted by phone or other electronic communications.
113 The pregnant woman shall report the loss of her pregnancy for any reason to the
114 Department of Community Supervision and her supervision officer within seven calendar
115 days of such loss.

116 (2) If a pregnant woman serving a term of probation fails to surrender herself to the
117 Department of Corrections in accordance with paragraph (1) of this subsection, such
118 pregnant woman may be prosecuted for a violation of Code Section 16-10-52 for willful
119 failure to surrender.

120 (3) The court's jurisdiction during any term of probation ordered pursuant to
121 paragraph (1) of subsection (b) of this Code section shall be the same as set forth in Code
122 Section 15-11-608 or 42-8-34, as applicable.

123 (4) Any time spent on probation by a pregnant woman shall be credited to the sentence
124 or disposition imposed.

125 (h) Commencing January 1, 2027, and annually thereafter, each penal institution shall
126 report to the Department of Public Health:

127 (1) The total number of women who were incarcerated;

128 (2) The total number of pregnant women who were incarcerated; and

129 (3) The total number of women who declined urine pregnancy testing under
130 paragraph (b)(2) of Code Section 17-4-26.

131 (i) The report provided pursuant to subsection (h) of this Code section shall exclude any
132 information that could reasonably lead to the identification of any individual woman and
133 shall comply with the provisions of the federal Health Insurance Portability and
134 Accountability Act of 1996, P.L. 104-191.

135 (j)(1) Any medical information, including, but not limited to, pregnancy testing and
136 prenatal or postpartum healthcare information, provided by, or with the consent of, a
137 pregnant woman or postpartum woman pursuant to this Code section or Code
138 Section 17-4-26 shall only be disclosed for the purposes of carrying out the provisions
139 of this Code section and in compliance with any applicable state and federal laws
140 regarding privacy, including, but not limited to, the provisions of the federal Health
141 Insurance Portability and Accountability Act of 1996, P.L. 104-191.

142 (2) On and after January 1, 2027, in no event shall any medical information, including,
143 but not limited to, pregnancy testing and prenatal or postpartum healthcare information,
144 provided by, or with the consent of, a pregnant woman or postpartum woman to a
145 supervision officer or custodian pursuant to this Code section or Code Section 17-4-26
146 be admissible for the purpose of establishing criminal liability, except where such
147 information is obtained independently through other lawful means.

148 ~~(f)~~(k) It is the intent of the General Assembly that a pregnant woman who is temporarily
149 held in a county jail pending transfer to a state penal institution be transferred as
150 expeditiously as possible. The Department of Corrections and a sheriff overseeing a
151 county jail in which a pregnant woman is incarcerated shall make all reasonable efforts to
152 facilitate such transfer. This subsection shall not apply to a pregnant woman who has been
153 sentenced to a county jail by a judge."

154

PART III

155

SECTION 3-1.

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