

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 amend Article 1 of Chapter 1 of Title 42 of the Official
5 Code of Georgia Annotated, relating to inmate policies, so as to revise provisions relating to
6 the treatment of pregnant and postpartum female inmates; to provide for a definition; to enact
7 a provision regarding sentencing for pregnant and postpartum female inmates; to provide for
8 the reporting of certain information; to provide for related matters; to provide for a short title;
9 to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **PART I**
12 **SECTION 1-1.**

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

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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 shall be released unless the woman poses a significant threat or danger to any person, to the community, or to any property in the community or unless such release is declined by the woman."

PART II

SECTION 2-1.

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:

- 41 (1) 'Custodian' means warden, sheriff, jailer, deputy sheriff, police officer, or any other
42 law enforcement officer.
- 43 (2) 'Immediate postpartum period' means the six-week period following childbirth unless
44 extended by a physician due to complications.
- 45 (3) 'Officer in charge' means the individual who is responsible for the supervision of a
46 penal institution.
- 47 (4) 'Penal institution' means any place of confinement for juvenile or adult individuals
48 accused of, convicted of, or adjudicated for violating a law of this state or an ordinance
49 of a political subdivision of this state.
- 50 (5) 'Pregnant woman' means a woman whose pregnancy has been verified by a
51 pregnancy test or through a medical examination conducted by a physician.
- 52 (6) 'Supervision officer' shall have the same meaning as the term 'probation officer' as
53 set forth in Code Section 15-11-2, 'community supervision officer' as set forth in Code
54 Section 42-3-1, 'private probation officer' as set forth in Code Section 42-8-100, or
55 'probation officer' as set forth in Code Section 42-8-100.
- 56 (7) 'Woman' means a juvenile or adult female who is confined in a penal institution.
- 57 (b) A pregnant woman shall not be required to squat or cough during a strip search
58 conducted by a custodian during the second or third trimester of pregnancy.
- 59 (c) A pregnant woman shall not be required to undergo any vaginal examination unless
60 prescribed and performed by a licensed ~~health care~~ healthcare professional.
- 61 (d)(1) Except as otherwise provided in this subsection and notwithstanding Code Section
62 42-5-58, a custodian shall not use handcuffs, waist shackles, leg irons, or restraints of any
63 kind on a pregnant woman who is in the second or third trimester of pregnancy, in labor,
64 or in delivery, or on a woman in the immediate postpartum period.
- 65 (2) A woman who is in the immediate postpartum period may only be restrained using
66 wrist handcuffs with her wrists held in front of her body and only if there are compelling
67 grounds to believe that such woman presents:

- 68 (A) An immediate and serious threat of harm to herself, staff, or others; or
- 69 (B) A substantial flight risk and cannot be reasonably contained by other means.
- 70 (3) If a custodian uses wrist handcuffs on a woman who is in the immediate postpartum
- 71 period under an exception provided in paragraph (2) of this subsection, the circumstances
- 72 for and details of such exception shall be documented within two days of the incident.
- 73 Such information shall include the nature of the circumstances and the length of time of
- 74 such use of restraints. The documentation shall be reviewed by the officer in charge and
- 75 retained by the penal institution for reporting purposes.
- 76 (4) Nothing in this subsection shall prohibit the use of medical restraints by a licensed
- 77 ~~health-care~~ healthcare professional to ensure the medical safety of a pregnant woman.
- 78 (e) A pregnant woman or woman who is in the immediate postpartum period shall not be
- 79 placed in solitary confinement, in administrative segregation, or for medical observation
- 80 in a solitary confinement setting; provided, however, that this shall not prevent the
- 81 placement of such woman in a cell or hospital room by herself.
- 82 (f)(1) At the time of sentencing a pregnant woman, when the court's sentence includes
- 83 a term of imprisonment and the court has determined the pregnant woman poses no
- 84 significant threat or danger to any person, to the community, or to any property in the
- 85 community, the court shall have such sentence deferred until 12 weeks post-delivery.
- 86 During such deferred time, the pregnant woman shall maintain perinatal healthcare,
- 87 treatment, and assessments and shall participate in education and resource programs to
- 88 the extent such programs are available in her community or from the Department of
- 89 Human Services. The pregnant woman shall report to the court monthly via phone and
- 90 check in electronically through a website link providing confirmation of perinatal
- 91 healthcare and personal contact information and contact information of participation in
- 92 education and resource programs. The court shall allow such woman to be supervised
- 93 on probation pre-incarceration for the length of her pregnancy and for at least 12 weeks
- 94 but up to 12 months after the birth of her child before she shall surrender herself to the

95 Department of Corrections. If, upon being ordered by the court, such woman fails to
96 surrender herself to the Department of Corrections, such woman may be prosecuted for
97 a violation of Code Section 16-10-52 for willful failure to surrender. The court shall
98 allow such pre-incarceration term of probation to be served without the payment of fines,
99 fees, restitution, and probation fees and shall allow supervision to be conducted by phone
100 or other electronic communications. During such term of probation, the pregnant woman
101 shall maintain perinatal healthcare, treatment, and assessments and shall participate in
102 education and resource programs to the extent such programs are available in her
103 community or from the Department of Human Services and shall provide monthly
104 reporting of her perinatal healthcare information to her supervision officer. The woman
105 shall report the loss of her pregnancy for any reason as assigned by the court and to her
106 supervision officer within 72 hours of such loss.

107 (2) The court's jurisdiction during such probated sentence shall be the same as set forth
108 in Code Section 15-11-608 or 42-8-34, as applicable.

109 (3) The time spent on pre-incarceration probation shall be credited to the sentence or
110 disposition imposed.

111 (g) Commencing January 1, 2025, and annually thereafter, each penal institution shall
112 report to the Department of Public Health the following for such penal institution:

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

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

115 (3) The total number of women who declined pregnancy testing; and

116 (4) The total number of women who declined deferred sentencing.

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

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

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PART III

128

SECTION 3-1.

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