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PENAL INSTITUTIONS Jails: Provide Law Enforcement Officers with Guidelines for Handling Detainees with Obvious Physical Injuries or Need for Emergency Medical Attention

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PENAL INSTITUTIONS

Jails: Provide Law Enforcement Officers with Guidelines for Handling Detainees with Obvious Physical Injuries or Need for Emergency Medical Attention

CODE SECTION:	O.C.G.A. § 42-4-12 (amended)
BILL NUMBER:	HB 1296
ACT NUMBER:	1049
GEORGIA LAWS:	1996 Ga. Laws 1638
SUMMARY:	The Act reduces the penalty imposed upon law enforcement officers for refusing to accept custody of persons charged with or guilty of an indictable offense (detainees). The Act allows law enforcement officers to refuse custody of detainees who have not received medical attention for obvious emergency medical conditions or physical injuries. The Act provides for the disposition of detainees when custody has been refused, when a medical release has been received, or when no public health facility is located in the county. The Act also provides for the payment of costs related to medical assessments.
EFFECTIVE DATE:	April 25, 1996[1]

History

Under the previous Code section 42-4-12,[2] a law enforcement officer who refused custody of a detainee was guilty of a felony.[3] The law imposed such severe liability upon law enforcement officers, because many times the rejected detainee died due to the severity of his or her condition.[4] Law enforcement officers, concerned for the safety of other detainees, refused to house ill persons, because they believed the ill

1. The Act became effective upon approval by the Governor.
2. Cobbs' 1851 Digest 807 (formerly found at O.C.G.A. § 42-4-12 (1994)).
3. *Id.*; Telephone Interview with John Carry Bittick, Officer in Georgia and National Sheriffs' Associations (May 2, 1996) [hereinafter Bittick Interview]. Sheriff Bittick explained that law enforcement officers had to accept detainees regardless of the severity of their medical condition. *Id.* Even if the jailors refused a detainee for cause and took the detainee to the hospital, they faced a felony charge. *Id.*
4. Telephone Interview with Rep. Curtis S. Jenkins, House District No. 110 (Apr. 25, 1996) [hereinafter Jenkins Interview].

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detainees would jeopardize the health of other detainees.[5] Nonetheless, law enforcement officers were penalized for their decisions not to house ill detainees.[6]

This situation arose primarily in municipal police departments when an ill or injured arrestee was taken to the county jail and turned over to the sheriff.[7] The sheriff would be held liable if the detainee died due to lack of proper medical attention.[8] HB 1296 was introduced to prevent the deaths of prison detainees and to protect law enforcement officers from excessive liability.[9]

HB 1296

According to Representative Curtis S. Jenkins, sponsor of HB 1296, the primary purpose of the Act is to protect three groups: jailors, taxpayers, and detainees.[10] First, the Act protects jailors by reducing the penalty imposed and by making a medical release easier to obtain.[11] The Act also enables jailors to ensure that all inmates are "physically capable of being housed."[12] Second, the Act protects taxpayers from liability that may arise when a prisoner or his family sues the governmental entity responsible for detainees.[13] Finally, the Act protects prisoners by ensuring they receive adequate and timely medical attention.[14] Jailors are not allowed to release detainees with obvious medical conditions or emergency conditions; rather, they must ensure that the detainees first receive medical treatment.[15]

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5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. Jenkins Interview, *supra* note 4; *see* O.C.G.A. § 42-4-12 (Supp. 1996). This law protects jailors in small rural counties, because they do not have to travel to a county with a public hospital in order to obtain a medical release. Jenkins Interview, *supra* note 4. Previously, law enforcement officers could get a medical release only from a hospital. *Id.* This situation presented a major problem for some small, rural counties that did not have hospitals. *Id.*
12. Bittick Interview, *supra* note 3.
13. Jenkins Interview, *supra* note 4.
14. *Id.*; Bittick Interview, *supra* note 3.
15. Jenkins Interview, *supra* note 4. Representative Jenkins explained that while the Act is designed to ensure that detainees receive medical treatment for obvious medical conditions, it does not require that detainees be cured. *Id.* The Act merely requires that jailors take detainees to a health care provider or facility and obtain a medical release. *Id.; see* O.C.G.A. § 42-4-12 (Supp. 1996). During committee hearings, the Georgia Municipal Association expressed concern that law enforcement officers would have to release detainees requiring medical attention because they believed the person needed to be cured to receive a medical release from the doctor. Jenkins Interview, *supra* note 4; Record of Proceedings in the Senate Committee on

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Refusing Custody of Medically Unfit Detainees

As introduced, HB 1296 provided that the jailor may refuse to accept a detainee who is "medically unfit to be housed safely in the jail pending acquisition of an appropriate medical release."[16] The House Committee on Public Safety amended the bill to allow a jail-keeper to refuse custody of a detainee "who has not received medical treatment for obvious physical injuries or conditions."[17] Fearing that law enforcement officers would be held liable for non-emergency conditions, the Senate added the requirement that the condition be of an "emergency nature."[18] The Act allows a jailor to refuse custody of a detainee who "has not received medical treatment for obvious physical injuries or conditions of an emergency nature."[19] Representative Jenkins explained that the purpose of these changes was to remove any ambiguity arising from the term "medically unfit."[20] The change protects law enforcement officers from possible liability for failure to obtain medical treatment for a detainee who does not have an obvious medical condition but may be considered medically unfit.[21] Thus, liability could be imposed only if a reasonable person would have considered the detainee's injuries to be an obvious medical condition or if the injury would be considered an emergency.[22]

Obtaining Medical Releases

As introduced, HB 1296 would have required that arresting agencies obtain an "appropriate medical release" before refusing custody of medically unfit detainees.[23] However, the Act allows arresting agencies

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Corrections, Correctional Institutions and Property (Feb. 21, 1996) (remarks by a representative from the Georgia Municipal Association). However, Representative Jenkins stated that a detainee may be incarcerated though he is not cured, as long as the law enforcement officer obtains a medical release. Jenkins Interview, *supra* note 4.

16. HB 1296, as introduced, 1996 Ga. Gen. Assem.
17. HB 1296 (HCS), 1996 Ga. Gen. Assem.
18. Jenkins Interview, *supra* note 4; *see* HB 1296 (SCS), 1996 Ga. Gen. Assem.
19. O.C.G.A. § 42-4-12 (Supp. 1996).
20. Jenkins Interview, *supra* note 4.
21. Jenkins Interview, *supra* note 4.
22. *Id.* Representative Jenkins explained that initially the Georgia Municipal Association (GMA) had reservations about the term "obvious physical condition." *Id.* The GMA was afraid jailors would be held liable if this "obvious" language was utilized, because it was unclear from whose viewpoint the obviousness of the detainee's injuries would be determined. *Id.* First, the GMA provided the legislature with a checklist of injuries that would be considered obvious, such as profuse bleeding. *Id.* The General Assembly, however, feared the checklist might not encompass all "obvious" injuries. *Id.* Therefore, the GMA agreed that "obvious" should remain as an objective standard: what a reasonable person would consider obvious. *Id.*
23. HB 1296, as introduced, 1996 Ga. Gen. Assem.

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simply to take detainees to either a health care facility or health care provider to obtain those releases.[24] This provision was designed to accommodate arresting agencies in small rural counties that do not have immediate access to hospitals.[25] It relieves arresting agencies from having to take extreme measures to obtain a medical release; rather, they can obtain the release from their local health care provider.[26] The Act also protects detainees by ensuring they receive immediate medical attention.[27]

Coroner Exemption from Liability

The Act deletes "coroners" from the list of persons who may be held liable.[28] Representative Jenkins explained that this section does not apply to coroners, because the only time a coroner interacts with a detainee is if the coronor is acting as sheriff.[29]

Penalty

The Act reduces the penalty imposed on a sheriff, constable, jailor, or other officer who violates the Act.[30] Previously, violators faced felony charges.[31] The Act reduces this penalty to a misdemeanor punishable by a fine of not more than $1000.[32]

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24. O.C.G.A. § 42-4-12 (Supp. 1996).

25. Jenkins Interview, *supra* note 4. Initially, the bill was amended to require that detainees be taken to "a public health facility" for medical releases. *See* HB 1296 (HCS), 1996 Ga. Gen. Assem. However, because some counties have no hospitals, the bill was amended again to allow health care providers or facilities to provide the release. Jenkins Interview, *supra* note 4; *see* O.C.G.A. § 42-4-12 (Supp. 1996).

26. Jenkins Interview, *supra* note 4; *see* O.C.G.A. § 42-4-12 (Supp. 1996).

27. Jenkins Interview, *supra* note 4.

28. O.C.G.A. § 42-4-12 (Supp. 1996).

29. Jenkins Interview, *supra* note 4. If a sheriff dies in office and has no chief deputy assistants to replace him, the coroner assumes the sheriff's duties. *Id.*

30. *Compare* O.C.G.A. § 42-4-12 (Supp. 1996) *with* 1851 Cobbs' Digest 807 (formerly found at O.C.G.A. § 42-4-12 (1994)).

31. 1851 Cobbs' Digest 807 (formerly found at O.C.G.A. § 42-4-12 (1994)). The Code section provided that a person violating the Act could be punished "by confinement for not less than two years nor longer than seven years and shall be dismissed from office." *Id.*

32. O.C.G.A. § 42-4-12 (Supp. 1996). The Act was originally designed to remove the felony charge. Jenkins Interview, *supra* note 4.

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