
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2527 **Hearing Date:** June 25, 2024
Author: Bauer-Kahan
Version: May 16, 2024
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Incarceration: pregnant persons*

HISTORY

Source: Essie Justice Group
Women's Foundation California Solis Policy Institute

Prior Legislation: AB 280 (Holden), on the Senate Inactive File
AB 2632 (Holden), vetoed in 2022
AB 2717 (Waldron), vetoed in 2022
AB 1225 (Waldron), held in Assembly Appropriations
AB 732 (Bonta), Ch. 321, Stats. 2020
AB 2507 (Jones-Sawyer), Ch. 944, Stats. 2018
SB 1433 (Mitchell), Ch. 311, Stats. 2016
AB 2530 (Atkins), Ch. 726, Stats. 2012
AB 478 (Lieber), Ch. 608, Stats. 2005
SB 617 (Speier), held in Senate Appropriations 2005
AB 2316 (Mazzoni), Ch. 965, Stats. 2000

Support: AMAAD Institute; BLKHTLH; California Public Defenders Association;
California WIC Association; Ella Baker Center for Human Rights; Fresh Lifelines
for Youth; Initiate Justice; Justice and Joy National Collaborative; Nextgen
California; Parenting for Liberation; Planned Parenthood Affiliates of California;
Public Health Advocates; Sister Warriors Freedom Coalition; Western Center on
Law & Poverty

Opposition: California State Sheriffs' Association

Assembly Floor Vote: 63 - 2

PURPOSE

The purpose of this bill is to prohibit incarcerated individuals who are pregnant or up to 12 weeks postpartum from being placed in solitary confinement or restrictive housing, and require that pregnant incarcerated individuals have access to at least 120 ounces of free bottled water and high-quality, high calorie food daily.

Existing law requires that any incarcerated person has the right to summon and receive the services of any physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice in order to determine whether they are pregnant. (Pen. Code, § 3406, subd. (a).)

Existing law requires that, if the incarcerated person is found to be pregnant, they are entitled to a determination of the extent of the medical and surgical services needed and to the receipt of these services from the physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice. (Pen. Code, § 3406, subd. (b).)

Existing law requires that a person who is incarcerated in state prison who is identified as possibly pregnant or capable of becoming pregnant during an intake health examination or at any time during incarceration be offered a test upon intake or by request. (Pen. Code, § 3408, subd. (a).)

Existing law requires that an incarcerated person with a positive pregnancy test result be offered comprehensive and unbiased options counseling that includes information about prenatal health care, adoption, and abortion. (Pen. Code, § 3408, subd. (b).)

Existing law requires that a person incarcerated in prison who is confirmed to be pregnant to be scheduled for a pregnancy examination with a physician, nurse practitioner, certified nurse-midwife, or physician assistant within seven days of arriving at the prison. Requires the examination to include all of the following:

- A determination of the gestational age of the pregnancy and the estimated due date.
- A plan of care, including referrals for specialty and other services to evaluate for the presence of chronic medical conditions or infectious diseases, and to use health and social status of the incarcerated person to improve quality of care, isolation practices, level of activities, and bed assignments, and to inform appropriate specialists in relationship to gestational age and social and clinical needs, and to guide use of personal protective equipment and additional counseling for prevention and control of infectious diseases, if needed.
- The ordering of prenatal labs and diagnostic studies, as needed based on gestational age or existing or newly diagnosed health conditions.
(Pen. Code, § 3408, subd. (d).)

Existing law requires that incarcerated pregnant persons be scheduled for prenatal care visits. (Pen. Code, § 3408, subd. (e).)

Existing law requires incarcerated pregnant persons to be provided access to both of the following:

- Prenatal vitamins, to be taken on a daily basis, in accordance with medical standards of care.
- Newborn care that includes access to appropriate assessment, diagnosis, care, and treatment for infectious diseases that may be transmitted from a birthing person to the birthing person's infant, such as HIV or syphilis.
(Pen. Code, § 3408, subd. (f).)

Existing law prohibits incarcerated pregnant persons in prison from being tased, pepper sprayed, or exposed to other chemical weapons. (Pen. Code, § 3408, subd. (h).)

Existing law requires that an eligible incarcerated pregnant person or person who gives birth after incarceration be provided notice of, access to, and written application for, community-based programs serving pregnant, birthing, or lactating incarcerated persons. (Pen. Code, § 3408, subd. (j)(1).)

Existing law requires that each incarcerated pregnant person be referred to a social worker to do all of the following:

- Discuss with the incarcerated person the options available for feeding, placement, and care of the child after birth, including the benefits of lactation;
- Assist the incarcerated pregnant person with access to a phone in order to contact relatives regarding newborn placement; and,
- Oversee the placement of the newborn child.
(Pen. Code, § 3408, subd. (k).)

Existing law requires that an incarcerated pregnant person be temporarily taken to a hospital outside the prison for the purpose of childbirth. (Pen. Code, § 3408, subd. (l).)

Existing law requires allows an incarcerated pregnant person to elect to have a support person present during labor, childbirth, and during postpartum recovery while hospitalized. Provides that the support person may be an approved visitor or a member of the prison staff designated to assist with prenatal care, labor, childbirth, lactation, and postpartum care. Requires the approval for the support person be made by the administrator of the prison. Provides that if the incarcerated pregnant person's request for a support person is denied, the incarcerated pregnant person may choose the approved institution staff to act as the support person. (Pen. Code, § 3408, subd. (m).)

Existing law requires that, at state prisons, all pregnant and postpartum incarcerated persons, including incarcerated persons who have had miscarriage, stillbirth, or abortion, including a termination of the pregnancy for medical reasons, shall receive appropriate, timely, culturally responsive, and medically accurate and comprehensive care, evaluation, and treatment of existing or newly diagnosed chronic conditions, including mental health disorders and infectious diseases. (Pen. Code, § 3408, subd. (n).)

Existing law requires that upon the person's return to prison, the physician, nurse practitioner, certified nurse-midwife, or physician assistant provide a postpartum examination within one week from childbirth and as needed for up to 12 weeks postpartum, and determine whether the incarcerated person may be cleared for full duty or if medical restrictions are warranted. Requires postpartum individuals to be given at least 12 weeks of recovery after any childbirth before they are required to resume normal activity. (Pen. Code, § 3408, subd. (p).)

Existing law requires CDCR to establish a community treatment program for incarcerated women who have one or more children under age six to be eligible to participate. Requires the program to provide for the release of the mother and child or children to a public or private facility in the community and which will provide the best possible care for the mother and child. (Pen. Code, § 3411.)

Existing law provides that if any woman received by or committed to CDCR has a child under six years of age, or gives birth to a child while incarcerated and under the jurisdiction of the

department, the child and the child's mother must, upon her request, be admitted to and retained in a community treatment program if the mother meets the eligibility criteria. Provides that women transferred to community treatment programs remain under the legal custody of the department. (Pen. Code, §§ 3416, 3417.)

Existing law requires that every incarcerated person who is pregnant and eligible for participation in the community treatment program have access to complete prenatal care, which includes a balanced, nutritious diet approved by a doctor. (Pen. Code, § 3424.)

Existing law requires the Board of State Community Corrections (BSCC) to establish minimum standards for state and local correctional facilities, including standards for pregnant individuals incarcerated in local detention facilities. (Penal Code § 6030.)

Existing law provides that any incarcerated person in any local detention facility has the right to summon and receive the services of any physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice in order to determine whether they are pregnant. The superintendent of the facility may adopt reasonable rules and regulations with regard to the conduct of examinations to effectuate the determination. (Penal Code § 4023.6, subd. (a).)

Existing law provides that if the incarcerated person is found to be pregnant, the person is entitled to a determination of the extent of the medical and surgical services needed and to the receipt of such services from the physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice. (Penal Code § 4023.6, subd. (b).)

Existing law defines "local detention facility" as any city, county, or regional facility used for the confinement of any female prisoner for more than 24 hours. (Penal Code § 4023.6, subd. (c).)

Existing law requires that a person who is incarcerated in a county jail who is identified as possibly pregnant or capable of becoming pregnant during an intake health examination or at any time during incarceration be offered a test upon intake or by request. (Pen. Code, § 4023.8, subd. (a).)

Existing law requires that a person incarcerated in a jail with a positive pregnancy test result be offered comprehensive and unbiased options counseling that includes information about prenatal health care, adoption, and abortion. (Pen. Code, § 4023.8, subd. (b).)

Existing law requires that a pregnant incarcerated person, within seven days of arriving at the prison or local detention facility, be scheduled for a pregnancy examination with a physician, nurse practitioner, certified nurse-midwife, or physician assistant. Requires the examination to include all of the following:

- A determination of the gestational age of the pregnancy and the estimated due date;
- A plan of care, including referrals for specialty and other services, isolation practices, level of activities, and bed assignments, social and clinical needs, among other services; and,
- Prenatal labs and diagnostic studies, as needed based on gestational age or existing or newly diagnosed health conditions.
- (Pen. Code, § 4023.8, subd. (d).)

Existing law requires incarcerated pregnant persons to be provided access to both of the following:

- Prenatal vitamins, to be taken on a daily basis, in accordance with medical standards of care.
- Newborn care that includes access to appropriate assessment, diagnosis, care, and treatment for infectious diseases that may be transmitted from a birthing person to the birthing person's infant, such as HIV or syphilis.
(Pen. Code, § 4023.8, subd. (f).)

Existing law prohibits incarcerated pregnant persons in jail from being tased, pepper sprayed, or exposed to other chemical weapons. (Pen. Code, § 4023.8, subd. (h).)

Existing law requires that an eligible incarcerated pregnant person in jail be provided notice of, access to, and written application for, community-based programs serving pregnant, birthing, or lactating incarcerated persons. (Pen. Code, § 4023.8, subd. (j).)

Existing law requires that each incarcerated pregnant person in jail be referred to a social worker who must do all of the following:

- Discuss with the incarcerated person the options available for feeding, placement, and care of the child after birth, including the benefits of lactation;
- Assist the incarcerated pregnant person with access to a phone in order to contact relatives regarding newborn placement; and,
- Oversee the placement of the newborn child.
(Pen. Code, § 4023.8, subd. (k).)

Existing law requires that an incarcerated pregnant person be temporarily taken to a hospital outside the jail for the purpose of giving childbirth. (Pen. Code, § 4023.8, subd. (l).)

Existing law allows an incarcerated pregnant person to elect to have a support person present during labor, childbirth, and during postpartum recovery while hospitalized. Provides that the support person may be an approved visitor or the jail's staff designated to assist with prenatal care, labor, childbirth, lactation, and postpartum care. (Pen. Code, § 4023.8, subd. (m).)

Existing law requires that, at jails, all pregnant and postpartum incarcerated persons receive appropriate, timely, culturally responsive, and medically accurate and comprehensive care, evaluation, and treatment of existing or newly diagnosed chronic conditions, including mental health disorders and infectious diseases. (Pen. Code, § 4023.8, subd. (n).)

Existing law requires that upon return to jail, the physician, nurse practitioner, certified nurse-midwife, or physician assistant provide a postpartum examination within one week from childbirth and as needed for up to 12 weeks postpartum, and determine whether the incarcerated person may be cleared for full duty or if medical restrictions are warranted. Requires postpartum individuals to be given at least 12 weeks of recovery after any childbirth before they are required to resume normal activity. (Pen. Code, § 4023.8, subd. (p).)

This bill requires pregnant persons incarcerated in state prisons to be provided access to a minimum of 120 ounces of free, clean bottled water each day, and daily high-quality and high

caloric nutritional meals that meet guidelines established by the Department of Public Health for the California Special Supplemental Nutrition Program for Women, Infants, and Children, as specified.

This bill prohibits a pregnant person incarcerated in a state prison from being placed in solitary confinement or a restrictive housing unit during the person's pregnancy or for 12 weeks postpartum.

This bill requires written notice of the denial of a request by a pregnant person incarcerated in state prison for an elected support person to be present during labor, childbirth, and postpartum recovery to be provided within two working days of receipt of the request rather than the 15 working days currently allowed.

This bill specifies that pregnant and postpartum incarcerated persons includes individuals who have a miscarriage, stillbirth, or abortion, including a termination of the pregnancy for medical reasons, for purposes of the existing requirement that all pregnant and postpartum incarcerated persons in state prison receive appropriate, timely, culturally responsive, and medically accurate and comprehensive care, evaluation, and treatment of existing or newly diagnosed chronic conditions, including mental health disorders and infectious diseases.

This bill requires pregnant persons incarcerated in detention facilities to be provided access to a minimum of 120 ounces of free, clean bottled water each day, and daily high-quality and high caloric nutritional meals that meet guidelines established by the Department of Public Health for the California Special Supplemental Nutrition Program for Women, Infants, and Children, as specified.

This bill prohibits a pregnant person incarcerated in a detention facility from being placed in solitary confinement or a restrictive housing unit during the person's pregnancy or for 12 weeks postpartum.

This bill provides that if a community-based program serving pregnant, birthing, or lactating incarcerated persons is denied access to a detention facility, the reason for the denial must be provided in writing to the incarcerated person within two working days of receipt of the request. Requires the written denial to address the safety or security concerns for the incarcerated person, infant, public, or staff.

This bill requires an incarcerated pregnant person to be provided with a written reason if the person's request for an elected support person to be present during labor, childbirth, and postpartum recovery is denied. Requires the written denial to be provided within two working days of receipt of the request. Requires the written denial to address the safety or security concerns for the incarcerated person, infant, public, or staff. Provides that the incarcerated pregnant person may choose the approved institution staff to act as the support person upon receipt of a written denial.

This bill specifies that pregnant and postpartum incarcerated persons includes individuals who have a miscarriage, stillbirth, or abortion, including a termination of the pregnancy for medical reasons, for purposes of the existing requirement that all pregnant and postpartum incarcerated persons in a detention facility receive appropriate, timely, culturally responsive, and medically accurate and comprehensive care, evaluation, and treatment of existing or newly diagnosed chronic conditions, including mental health disorders and infectious diseases.

This bill defines “detention facility” as any city, county, or regional facility used for the confinement of any person, including those under 18 years of age, for more than 24 hours.

This bill replaces the terms “county jail” and “jail” throughout a statute that delineates requirements and prohibitions in the jail context as they relate to incarcerated individuals who are pregnant or postpartum. Makes conforming changes.

COMMENTS

1. Need For This Bill

According to the author:

All pregnant people deserve to be safe in their environment, have access to clean drinking water and healthy meals. As a mother, I know how important these things are. Unfortunately, despite current regulations, the reality in our state is that people who are pregnant while incarcerated do not have these basic needs met. AB 2527 creates minimum requirements that pregnant incarcerated people be given clean, bottled water and codifies nutrition standards. This bill also prohibits putting pregnant people in solitary confinement and other forms of restrictive housing. AB 2527 makes progress towards ensuring that all pregnant people are treated with dignity and respect.

2. Unique Needs During Pregnancy and the Postpartum Period

Current law provides pregnant individuals incarcerated in the state’s prisons and county jails with a minimal level of pre- and postpartum services, such as access to a social worker, regular prenatal care visits with a health care provider, and the right to have delivery take place in a hospital outside of the institution. (Pen. Code, §§ 3408, 4023.8.)

According to the National Institute of Health (NIH), “[g]eneral fluid needs increase during pregnancy in order to support fetal circulation, amniotic fluid, and a higher blood volume.” (NIH, *Nutrition Column an Update on Water Needs During Pregnancy and Beyond*, p. 41 available at <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1595116/pdf/JPE10040.pdf>>.) Additionally, an “adequate fluid supply also ensures that the mother has enough reserves to tolerate blood loss during delivery.” (*Id.* at p. 42.) The American College of Obstetrics and Gynecologists (ACOG) recommends drinking 8 to 12 cups (64 to 96 ounces) of water every day during pregnancy. (ACOG, *How Much Water Should I Drink During Pregnancy?*, available at <<https://www.acog.org/womens-health/experts-and-stories/ask-acog/how-much-water-should-i-drink-during-pregnancy>>.) The NIH also advises that, “pregnant women must be cautioned that some water is tainted with lead, which can result in spontaneous abortion, decreased stature, and deficiency in the neurodevelopment of the growing fetus. Water contamination can be of particular concern in the pregnant woman who already has a reduced immunity related to the pregnancy.” (NIH, *supra* at p. 41.) “Contamination can be avoided with the use of bottled water. [...] Bottled water is regulated by the Food and Drug Administration for water quality and accurate labeling.” (*Ibid.*)

The U.S. Department of Health and Human Services (HHS) reports that nutrition plays a vital role before, during, and after pregnancy to support the health of the mother and the child.

(USDA, *Dietary Guidelines for Americans, 2020-2025*, p. 109 available at <https://www.dietaryguidelines.gov/sites/default/files/2021-03/Dietary_Guidelines_for_Americans-2020-2025.pdf>.) Among other vitamins and minerals, individuals with a healthy pre-pregnancy weight need about 340-450 extra calories per day from nutrient-dense choices during the second and third trimester. (*Id.* at p. 112.) Maternal nutrition can contribute positively to the delivery of a healthy, full-term newborn of an appropriate weight. Pregnant individuals often experience nausea, cravings, and have smaller gastric capacity, thus pregnant people in custody should receive healthy snacks outside of scheduled mealtimes. (ACOG, *Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals*, p. 5 available at <<https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2021/07/reproductive-health-care-for-incarcerated-pregnant-postpartum-and-nonpregnant-individuals.pdf>>.)

This bill requires pregnant persons incarcerated in state prisons and local detention facilities to be provided access to a minimum of 120 ounces of free, clean bottled water each day, and daily high-quality and high caloric nutritional meals that meet guidelines established by the Department of Public Health for the California Special Supplemental Nutrition Program for Women, Infants, and Children.

3. Use of Solitary Confinement or Restrictive Housing

Under existing law, pregnant individuals incarcerated in local detention facilities and state prison are given a plan of care that include “isolation practices, level of activities, and bed assignments.” (Pen. Code, §§ 3408, subd. (d), 4023.8, subd. (d).) Incarcerated pregnant persons housed in a multitier housing unit must be assigned lower bunk and lower tier housing. (Pen. Code, §§ 3408, subd. (g), 4023.8, subd. (g).) Other than these provisions, existing law is silent as to whether incarcerated pregnant individuals can be placed in solitary confinement or restrictive housing.

According to the United Nations’ Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, pregnant women, women with infants, and breastfeeding mothers should never be subjected to solitary confinement, as they are at especially high risk of psychological damage due to isolation and solitary can curtail their access to prenatal care. (*U.N. Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (Dec. 2010), available at <<https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-treatment-women-prisoners-and-non-custodial>>.)

According to ACOG:

Pregnant people should not be placed in solitary confinement. The mental health effects on people placed in restrictive housing can be compounded in pregnancy. Being in solitary confinement can limit access to timely health care, especially when urgent pregnancy concerns arise. Such housing also limits mobility and often by default results in bedrest, which has documented harms in pregnancy. Furthermore, the practice of routinely placing pregnant people in medical isolation for the sole purpose of proximity to health care staff is not recommended when such arrangements limit access to programming, exercise, and social interaction.”
(ACOG, *Reproductive Health Care*, *supra* at p. 8.)

This bill prohibits pregnant individuals incarcerated in state prisons and local detention facilities from being housed in solitary confinement or restrictive housing units during their pregnancy and for 12 weeks postpartum.

4. Other Provisions of the Bill

This bill includes a number of provisions that create parity between procedures related to pregnant individuals housed in local detention facilities with those housed in state prisons. For example, under current law, both state prisons and local detention facilities are required to allow an incarcerated person to request to elect to have a support person present during labor, childbirth, and during postpartum recovery while hospitalized. (Pen. Code, §§ 3408, subd. (m), 4023.8, subd. (m).) If the request is denied, a written reason for the denial is only required to be provided to incarcerated persons housed at state prisons. (Pen. Code, § 3408, subd. (m).) A pregnant person incarcerated in a local detention facility is not entitled to receipt of a reason for the denial, and this bill provides that a pregnant person incarcerated in a local detention facility is entitled to a written reason for the denial of the request.

This bill additionally replaces all references to “county jail” and “jail” in Penal Code section 4023.8 with “detention facility.” This bill defines detention facility as “any city, county, or regional facility used for the confinement of any person, including those under 18 years of age, for more than 24 hours.” In other words, as proposed to be amended by this bill, Penal Code section 4023.8 would apply to county juvenile facilities such as juvenile hall and camps.

With respect to juveniles, current regulations require the health administrator for each juvenile facility, in cooperation with the facility administrator, to develop written policies and procedures pertaining to pregnant and postpartum youth as required by Penal Code section 6030 and Welfare and Institutions Code sections 220, 221, and 222. (Cal. Code Regs., tit. 15, § 1417.) Specifically, written policies and procedures must include the following: pregnant youth will receive information regarding options for continuation of pregnancy, termination of pregnancy, and adoption; pregnant youth receive prenatal care, including physical examination, nutrition guidance, childbirth, breast feeding and parenting education, counseling and provisions for follow up and post-partum care; availability of a breast pump and procedures for storage, delivery, or disposal for lactating youth; and qualified medical professionals develop a plan for pregnant youth that includes direct communication of medical information and transfer of medical records regarding prenatal care to the obstetrician who will be providing prenatal care and delivery in the community. (*Ibid.*)

5. Argument in Support

Planned Parenthood Affiliates of California writes:

AB 2527 ... improves conditions for incarcerated pregnant people by preventing pregnant people’s placement in solitary confinement during pregnancy [and] immediately postpartum. This bill also requires access to clean water and high-quality meals while pregnant and incarcerated.

Access to clean and healthy meals are key to healthy pregnancies yet incarcerated people are regularly deprived of access to clean water and nutritious meals. A report from the ACLU on reproductive health in the California criminal justice system shows that the quality of water in detention facilities is so poor, pregnant

people cannot safely drink it. There are many cases where pregnant people receive inedible meals and as a result, find themselves surviving off peanut butter and jelly sandwiches. Inadequate nutrition endangers the health of a fetus and violates a pregnant incarcerated person's human rights.

Pregnant people in California continue to be subject to the acute stress of solitary confinement. The prolonged psychological distress from the isolation causes severe damage. For pregnant people, the psychological stress can cause pregnancy complications and affect fetal development. ...

PPAC is proud to support efforts to reduce health disparities and target disparate health outcomes by addressing the underlying causes of such disparities, including social determinants of health. Pregnant people should not experience such extreme conditions, yet incarcerated people are experiencing them here in California.

6. Argument in Opposition

According to the California State Sheriff Association:

Existing regulation already governs meal requirements for all incarcerated persons and makes specific accommodation for pregnant and lactating people. Specifically, Title 15 of the California Code of Regulations requires pregnant people to be provided a balanced, nutritious diet approved by a doctor and provides that they shall receive two extra eight ounce cartons of milk or a calcium supplement if lactose intolerant, two extra servings of fresh fruit, and two extra servings of fresh vegetables daily. The regulation also allows a physician to order additional nutrients as necessary. Addressing these proposed changes via regulation is more appropriate than doing so in statute because the regulations are constantly updated by stakeholders and experts who work with and implement these issues.

Further, we object to the blanket restriction on the use of solitary confinement or restrictive housing unit assignments for pregnant persons for the entirety of their pregnancy plus 12 weeks postpartum. There are any number of situations where these types of housing assignments may be the most appropriate and safe for the person, other inmates, or staff and yet this bill creates an outright ban on their use without regard to the specifics of any potential scenario.

-- END --