
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2740 **Hearing Date:** June 25, 2024
Author: Waldron
Version: February 15, 2024
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Incarcerated persons: prenatal and postpartum care*

HISTORY

Source: Sister Warriors Freedom Project
Young Women's Freedom Center

Prior Legislation: AB 2717 (Waldron) vetoed in 2022
AB 732 (Bonta), Ch. 321, Stats. 2020
AB 2507 (Jones-Sawyer), Ch. 944, Stats. 2018
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: American College of Obstetricians and Gynecologists District IX; California Alliance of Child and Family Services; California Legislative Women's Caucus; California Public Defenders Association; Ella Baker Center for Human Rights; Initiate Justice; La Defensa; Los Angeles Regional Reentry Partnership; Pacific Juvenile Defender Center; Sisters Warriors Freedom Coalition

Opposition: None known

Assembly Floor Vote: 72 - 0

PURPOSE

The purpose of this bill is to: require an incarcerated individual in state prison and the person's newborn child to remain at a medical facility following delivery for no fewer than three days after delivery for recovery and postpartum medical care; require an incarcerated mother to be permitted to breastfeed the newborn and pump breast milk to be stored and provided to the child upon removal from the medical facility; require the California Department of Corrections and Rehabilitation (CDCR) to expedite a family visitation application for incarcerated pregnant persons in order to prevent delays for visitation for the incarcerated mother and newborn child following delivery; require a plan of care for an incarcerated pregnant person to include a meal plan with additional meals and beverages; and require that incarcerated pregnant individuals in state prison be referred to a social worker to discuss options for parenting classes and other classes relevant to caring for newborns and options for placement and visiting the newborn.

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 prenatal vitamins, to be taken on a daily basis, in accordance with medical standards of care. (Pen. Code, § 3408, subd. (f)(1).)

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 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 any amendments to existing regulations and any future regulations adopted by CDCR which may impact the visitation of incarcerated persons to do all of the following:

- Recognize and consider the value of visiting as a means to improve the safety of prisons for both staff and the incarcerated population.
- Recognize and consider the important role of visitation in establishing and maintaining a meaningful connection with family and community.
- Recognize and consider the important role of visitation in preparing an incarcerated person for successful release and rehabilitation.
(Pen. Code, § 6400.)

This bill requires each incarcerated pregnant person to be referred to a social worker within seven days of arriving at the prison who must discuss with the incarcerated person options for parenting classes and other classes relevant to caring for newborns and options for visiting with the newborn. Requires, upon referral, a social worker to discuss with the incarcerated pregnant person the options to establish future placement for the child and to secure that placement for the child.

This bill requires a plan of care for an incarcerated pregnant person to include a meal plan with additional meals and beverages, in accordance with medical standards of care.

This bill requires the incarcerated mother and the newborn child to remain at the medical facility following delivery for no fewer than three days after delivery for recovery and postpartum medical care. Requires the incarcerated mother and child to be provided with no fewer than three days of bonding time after delivery and before the newborn child is removed.

This bill requires the incarcerated mother to be permitted to breastfeed the newborn and pump breast milk to be stored and provided to the child upon removal from the medical facility.

This bill requires CDCR to expedite a family visitation application process for incarcerated pregnant persons in order to prevent delays for visitation for the incarcerated mother and newborn child following delivery.

This bill prohibits eligibility for family visitation for the incarcerated mother to see their newborn child from being limited unless the incarcerated mother was convicted of a sex offense and the victim was a minor or family member.

COMMENTS

1. Need For This Bill

According to the author:

By reimagining the outcomes of infants born within a CA state prison, AB 2740 will prioritize prenatal and postpartum medical care for incarcerated mothers. It will connect incarcerated pregnant mothers to a social worker, and strengthen medical care for incarcerated mothers by giving them no less than three full days in the medical facility after delivery for care and newborn bonding. AB 2740 will promote breastfeeding, pumping, and storing colostrum/breast milk during the three full days in the medical facility after delivery. This bill will also expedite the family visitation process for mom and infant to prevent delays after delivery. Additionally, it will expand family visitation eligibility by removing violent crimes as a disqualifying factor and only prohibiting family visitation if the incarcerated mother was convicted of a sex offense and the victim was a minor or family member.

2. Incarcerated Pregnant Individuals at CDCR

Current law provides incarcerated pregnant individuals 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.) In addition, some incarcerated women are eligible for the Community Prison Mother Program (CPMP). The CPMP provides an opportunity for pregnant individuals and mothers with one or more children who are six years of age or younger, the opportunity to be housed with their children in a supervised facility away from the prison setting. The primary focus of the CPMP is to reunite mothers with their children and re-integrate them back into society as productive citizens by providing a safe, stable, wholesome and stimulating environment. CPMP also seeks to establish stability in the parent-child relationship, provide the opportunity for mothers who are incarcerated individuals to bond with their children, and strengthen the family unit. (CDCR, *Community Participant Mother Program*, available at <<https://www.cdcr.ca.gov/rehabilitation/pre-release-community-programs/community-prisoner-mother-program/>>.)

3. Effect Of This Bill

Under existing law, pregnant individuals who are incarcerated in prisons are referred to a social worker. (Pen. Code, § 3408, subd. (k).) The social worker is required to 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. (*Ibid.*) This bill requires that the incarcerated pregnant person to be referred to a social worker within seven days of arriving at the prison and requires the social worker to discuss with the incarcerated person options for parenting classes and other classes relevant to caring for newborns, options for visiting with the newborn, and options to establish future placement for the child and to secure that placement for the child.

This bill also requires an incarcerated pregnant individual's plan of care to include a meal plan with additional meals and beverages in accordance with medical standards of care. 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*, available at <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1595116/>>.) 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.)

This bill additionally requires, following delivery at a medical facility, the incarcerated mother and the newborn child to remain at the facility no fewer than three days after delivery for postpartum medical care. It would further allow the incarcerated mother and child to be provided with no less than three days of bonding time after delivery and before the newborn child is removed. This bill would also prohibit eligibility for family visitation for the incarcerated mother to see their newborn child from being limited unless the incarcerated mother was convicted of a sex offense and the victim was a minor or family member.

Finally, this bill requires incarcerated mothers to be permitted to breastfeed their newborn and pump breast milk to be stored and provided to the child upon removal from the medical facility. Under existing law, the social worker is required to discuss with the incarcerated person the “benefits of lactation.” (Pen. Code, § 3408, subd. (k).) The American College of Obstetrics and Gynecologists (ACOG) encourages correctional facilities to provide lactation support and accommodations for postpartum individuals to provide breastmilk for their infants. (ACOG, ACOG Committee Opinion, *Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals* (Jul. 2021), p. 6 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>>.)

4. Argument in Support

American College of Obstetricians and Gynecologists District IX writes:

Being pregnant while incarcerated can be emotionally isolating, especially with the knowledge of impending separation from one’s newborn. Because of restrictions on hospital visitation, these individuals typically go through childbirth without a support person, which exacerbates their feelings of isolation and emotional distress. Barriers to enabling them to provide breast milk to their newborns include limited visit times, equipment, logistical coordination with outside infant caregivers, and privacy for pumping.

AB 2740 addresses these issues by connecting incarcerated pregnant mothers to a social worker, and strengthening their medical care by giving them no less than three full days in the medical facility after delivery for care and newborn bonding. AB 2740 will promote breastfeeding, pumping, and storing colostrum/breast milk during the three full days in the medical facility after delivery, as well as expedite the family visitation process for mom and infant to prevent delays after delivery.

-- END --