

AMENDED IN ASSEMBLY JUNE 18, 2014

AMENDED IN SENATE MARCH 24, 2014

SENATE BILL

No. 1135

Introduced by Senator Jackson
(Principal coauthors: Senators Anderson and Hancock)
(Principal coauthor: Assembly Member Lowenthal)

February 20, 2014

An act to add Chapter 6 (commencing with Section 3440) to Title 2 of Part 3 of the Penal Code, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

SB 1135, as amended, Jackson. Inmates: sterilization.

Existing law establishes a state correctional system and provides for the establishment of county jails. Existing law regulates certain aspects of medical care for inmates.

This bill would prohibit sterilization for the purpose of birth control of an individual under the control of the Department of Corrections and Rehabilitation or a county correctional facility, as specified. The bill would also otherwise prohibit any means of sterilization of an inmate, except when required for the immediate preservation of life in an emergency medical situation or when ~~required for the necessary treatment of a physical medical condition if medically necessary,~~ *excluding for the purpose of birth control, as determined by contemporary standards of evidence-based medicine, to treat a diagnosed condition* and certain requirements are satisfied, including that patient consent is obtained. If a sterilization procedure is performed pursuant to these exceptions, the bill would require psychological consultation and medical followup, as specified. The bill would require the department and all county jails or other institutions of confinement

to publish an annual report of sterilizations performed, disaggregated by race, age, medical justification, and method of sterilization, including, but not limited to, hysterectomy and oophorectomy, and to provide notification to all individuals under their custody, and to all employees who are involved in providing health care services, of their rights and responsibilities with regard to the sterilization of inmates.

By imposing additional duties on local correctional facilities in connection with inmate medical care, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature in enacting this
2 act to prevent sterilization abuse of vulnerable populations, to
3 ensure safeguards against sterilization abuse within the coercive
4 environment of prison and jail, and to positively affirm that all
5 people should have the right to fully self-determine their
6 reproductive lives free from coercion, violence, or threat of force.

7 SEC. 2. Chapter 6 (commencing with Section 3440) is added
8 to Title 2 of Part 3 of the Penal Code, to read:

9

10 CHAPTER 6. STERILIZATION OF INMATES

11

12 3440. (a) Sterilization for the purpose of birth control,
13 including, but not limited to, during labor and delivery, of an
14 individual under the control of the department or a county and
15 imprisoned in the state prison or a reentry facility, community
16 correctional facility, county jail, or any other institution in which
17 an individual is involuntarily confined or detained under a civil or
18 criminal statute, is prohibited.

1 (b) Sterilization of an individual under the control of the
2 department or a county and imprisoned in the state prison or a
3 reentry facility, community correctional facility, county jail, or
4 any other institution in which an individual is involuntarily
5 confined or detained under a civil or criminal statute, through tubal
6 ligation, hysterectomy, oophorectomy, or any other means
7 rendering an individual permanently incapable of reproducing, is
8 prohibited except in either of the following circumstances:

9 (1) The procedure is required for the immediate preservation
10 of the individual's life in an emergency medical situation.

11 (2) The *sterilizing* procedure is ~~required for the necessary~~
12 ~~treatment of a physical medical condition, excluding birth control,~~
13 ~~and only if medically necessary, excluding for the purpose of birth~~
14 ~~control, as determined by contemporary standards of~~
15 ~~evidence-based medicine, to treat a diagnosed condition, and all~~
16 of the following requirements are satisfied:

17 (A) Less ~~drastic~~ *invasive* measures to address the medical need
18 are nonexistent, are refused by the individual, or are first attempted
19 and deemed ~~unsuccessful~~. *unsuccessful by the individual, in*
20 *consultation with his or her medical provider.*

21 (B) A second physician independent of, and not employed by,
22 but authorized to provide services to individuals in the custody of,
23 and to receive payment for those services from, the department or
24 county department overseeing the confinement of the individual
25 conducts an in-person consultation *with the individual* and confirms
26 the need for a medical intervention resulting in sterilization to
27 address the medical need.

28 (C) Patient consent is obtained after the individual is made aware
29 of the full and permanent impact the procedure will have on his
30 or her reproductive capacity, that future medical treatment while
31 under the control of the department or county will not be withheld
32 should the individual refuse consent to the procedure, and the side
33 effects of the procedure.

34 (c) If a sterilization procedure is performed pursuant to
35 paragraph (1) or (2) of subdivision (b), presterilization and
36 poststerilization psychological consultation and medical followup,
37 including providing relevant hormone therapy to address surgical
38 menopause, shall be made available to the individual sterilized
39 while under the control of the department or the county.

1 (d) The department and all county jails or other institutions of
2 confinement shall do both of the following:

3 (1) Publish an annual report of sterilizations performed,
4 disaggregated by race, age, medical justification, and method of
5 sterilization, including, but not limited to, hysterectomy and
6 oophorectomy.

7 (2) Provide notification to all individuals under their custody
8 and to all employees who are involved in providing health care
9 services of their rights and responsibilities under this section.

10 (e) An employee of the department or of a county jail or other
11 institution of confinement who reports the sterilization of an
12 individual performed in violation of this section is entitled to the
13 protection available under subparagraphs (A) and (B) of paragraph
14 (2) of subdivision (a) of Section 6129, or under the California
15 Whistleblower Protection Act (Article 3 (commencing with Section
16 8547) of Chapter 6.5 of Division 1 of Title 2 of the Government
17 Code) or the Whistleblower Protection Act (Article 10
18 (commencing with Section 9149.20) of Chapter 1.5 of Part 1 of
19 Division 2 of Title 2 of the Government Code).

20 SEC. 3. If the Commission on State Mandates determines that
21 this act contains costs mandated by the state, reimbursement to
22 local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code.