

AMENDED IN SENATE MARCH 30, 2016

**SENATE BILL**

**No. 1433**

---

---

**Introduced by Senator Mitchell**

February 19, 2016

---

---

An act to ~~amend Section 3409~~ *repeal and add Sections 3409 and 4023.5* of the Penal Code, relating to ~~inmates~~ *incarcerated persons*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1433, as amended, Mitchell. ~~Inmates: family planning and hygiene.~~ *Incarcerated persons: contraceptive counseling and services.*

Existing law requires *that any woman inmate upon her request in state prison, or any female confined in a local detention facility, as defined, be allowed to continue to use materials necessary for (1) personal hygiene with regard to her menstrual cycle and reproductive system and (2) birth control measures as prescribed by her physician physician, upon her request.* Existing law requires each and every woman inmate *or female confined in a local detention facility to be furnished with information and education regarding the availability of family planning services by the Department of Corrections and Rehabilitation or the county, respectively.* Existing law ~~also~~ requires family planning services to be offered to each and every woman inmate *or female confined in a local detention facility at least 60 days prior to a scheduled release date, as specified. Existing law also requires the department or county, respectively, to furnish any woman inmate or female confined in a local detention facility with the services of a licensed physician or with services necessary to meet her family planning needs at the time of her release, as specified, upon her request.*

This bill would ~~make technical, nonsubstantive changes to these provisions.~~ *provide that any person incarcerated in state prison or*

*confined in a local detention facility who menstruates shall, upon request, have access to and be allowed to use materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system. The bill would provide that incarcerated or confined persons who are capable of becoming pregnant shall, upon request, have access to and be allowed to obtain contraceptive counseling and their choice of birth control at no cost. The bill would require that all birth control methods and emergency contraception approved by the United States Food and Drug Administration (FDA) be made available to incarcerated or confined persons who are capable of becoming pregnant, except as provided. The bill would require all contraceptive counseling and contraceptive services provided to these persons to be furnished by a licensed health care practitioner with a clinical background in reproductive health care and to be nondirective, unbiased, and noncoercive. The bill would require health care providers furnishing contraceptive services to receive specified training. The bill would require the department or county, respectively, to furnish incarcerated or confined persons who are capable of becoming pregnant with information and education regarding the availability of family planning services and their right to receive nondirective, unbiased, and noncoercive contraceptive counseling and services. The bill would require each facility to post this information in conspicuous places, as specified. The bill would require contraceptive and family planning services to be offered and made available to all incarcerated or confined persons capable of becoming pregnant at least 60 days, but not longer than 90 days, prior to a scheduled release date. By requiring counties to provide contraception counseling, birth control, and specified information and education to persons confined in local detention facilities who menstruate or who are capable of becoming pregnant, 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: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

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

1     *SECTION 1. Section 3409 of the Penal Code is repealed.*

2     ~~3409. (a) Any woman inmate shall upon her request be allowed~~  
3 ~~to continue to use materials necessary for (1) personal hygiene~~  
4 ~~with regard to her menstrual cycle and reproductive system and~~  
5 ~~(2) birth control measures as prescribed by her physician.~~

6     ~~(b) Each and every woman inmate shall be furnished by the~~  
7 ~~department with information and education regarding the~~  
8 ~~availability of family planning services.~~

9     ~~(c) Family planning services shall be offered to each and every~~  
10 ~~woman inmate at least 60 days prior to a scheduled release date.~~  
11 ~~Upon request any woman inmate shall be furnished by the~~  
12 ~~department with the services of a licensed physician or she shall~~  
13 ~~be furnished by the department or by any other agency which~~  
14 ~~contracts with the department with services necessary to meet her~~  
15 ~~family planning needs at the time of her release.~~

16     *SEC. 2. Section 3409 is added to the Penal Code, to read:*

17     3409. (a) *Any incarcerated person in state prison who*  
18 *menstruates shall, upon request, have access and be allowed to*  
19 *use materials necessary for personal hygiene with regard to their*  
20 *menstrual cycle and reproductive system. Any incarcerated person*  
21 *who is capable of becoming pregnant shall, upon request, have*  
22 *access and be allowed to obtain contraceptive counseling and*  
23 *their choice of birth control at no cost.*

24     (b) (1) *Except as provided in paragraph (2), all birth control*  
25 *methods and emergency contraception approved by the United*  
26 *States Food and Drug Administration (FDA) shall be made*  
27 *available to incarcerated persons who are capable of becoming*  
28 *pregnant, with the exception of sterilizing procedures prohibited*  
29 *by Section 3440.*

30     (2) *If a birth control method or emergency contraception has*  
31 *one or more FDA-approved therapeutic equivalents, only one*  
32 *version of that method or emergency contraception shall be*  
33 *required to be made available unless another version is specifically*  
34 *indicated by a prescribing provider.*

35     (c) (1) *All contraceptive counseling and contraceptive services*  
36 *provided to incarcerated persons who are capable of becoming*  
37 *pregnant shall be furnished by a licensed health care provider*  
38 *with a clinical background in reproductive health care and shall*

1 *be nondirective, unbiased, and noncoercive. These services shall*  
 2 *be furnished by the department or by any other agency which*  
 3 *contracts with the department. Except as provided in paragraph*  
 4 *(2), health care providers furnishing contraceptive services shall*  
 5 *receive training in the following areas:*

6 (A) *The requirements of this section.*

7 (B) *Providing nondirective, unbiased, and noncoercive*  
 8 *contraceptive counseling and services.*

9 (2) *Providers who attend an orientation program for the Family*  
 10 *Planning, Access, Care, and Treatment Program shall be deemed*  
 11 *to have met the training requirements described in subparagraph*  
 12 *(B).*

13 (d) *Any incarcerated person who is capable of becoming*  
 14 *pregnant shall be furnished by the department with information*  
 15 *and education regarding the availability of family planning services*  
 16 *and their right to receive nondirective, unbiased, and noncoercive*  
 17 *contraceptive counseling and services. Each facility shall post this*  
 18 *information in conspicuous places to which all incarcerated*  
 19 *persons who are capable of becoming pregnant have access.*

20 (e) *Contraceptive counseling and family planning services shall*  
 21 *be offered and made available to all incarcerated persons who*  
 22 *are capable of becoming pregnant at least 60 days, but not longer*  
 23 *than 90 days, prior to a scheduled release date.*

24 (f) *Nothing in this section shall be construed to limit an*  
 25 *incarcerated person's access to any method of contraception that*  
 26 *is prescribed or recommended for any medically indicated reason.*

27 *SEC. 3. Section 4023.5 of the Penal Code is repealed.*

28 ~~4023.5. (a) Any female confined in any local detention facility~~  
 29 ~~shall upon her request be allowed to continued to use materials~~  
 30 ~~necessary for (1) personal hygiene with regard to her menstrual~~  
 31 ~~cycle and reproductive system and (2) birth control measures as~~  
 32 ~~prescribed by her physician.~~

33 ~~(b) Each and every female confined in any local detention~~  
 34 ~~facility shall be furnished by the county with information and~~  
 35 ~~education regarding the availability of family planning services.~~

36 ~~(c) Family planning services shall be offered to each and every~~  
 37 ~~woman inmate at least 60 days prior to a scheduled release date.~~  
 38 ~~Upon request any woman inmate shall be furnished by the county~~  
 39 ~~with the services of a licensed physician or she shall be furnished~~  
 40 ~~by the county or by any other agency which contracts with the~~

1 county with services necessary to meet her family planning needs  
2 at the time of her release.

3 ~~(d) For the purposes of this section, “local detention facility”~~  
4 ~~means any city, county, or regional facility used for the~~  
5 ~~confinement of any female prisoner for more than 24 hours.~~

6 *SEC. 4. Section 4023.5 is added to the Penal Code, to read:*

7 *4023.5. (a) Any person confined in a local detention facility*  
8 *who menstruates shall, upon request, have access and be allowed*  
9 *to use materials necessary for personal hygiene with regard to*  
10 *their menstrual cycle and reproductive system. Any person confined*  
11 *in a local detention facility who is capable of becoming pregnant*  
12 *shall, upon request, have access and be allowed to obtain*  
13 *contraceptive counseling and their choice of birth control at no*  
14 *cost.*

15 *(b) (1) Except as provided in paragraph (2), all birth control*  
16 *methods and emergency contraception approved by the United*  
17 *States Food and Drug Administration (FDA) shall be made*  
18 *available to persons confined in a local detention facility who are*  
19 *capable of becoming pregnant, with the exception of sterilizing*  
20 *procedures prohibited by Section 3440.*

21 *(2) If a birth control method or emergency contraception has*  
22 *one or more FDA-approved therapeutic equivalents, only one*  
23 *version of that method or emergency contraception shall be*  
24 *required to be made available unless another version is specifically*  
25 *indicated by a prescribing provider.*

26 *(c) (1) All contraceptive counseling and provision of*  
27 *contraceptive services to persons confined in a local detention*  
28 *facility who are capable of becoming pregnant shall be furnished*  
29 *by a licensed health care provider with a clinical background in*  
30 *reproductive health care and shall be nondirective, unbiased, and*  
31 *noncoercive. These services shall be furnished by the county or*  
32 *by any other agency which contracts with the county. Except as*  
33 *provided in paragraph (2), health care providers furnishing*  
34 *contraceptive services shall receive training in the following areas:*

35 *(A) The requirements of this section.*

36 *(B) Providing nondirective, unbiased, and noncoercive*  
37 *contraceptive counseling and services.*

38 *(2) Providers who attend an orientation program for the Family*  
39 *Planning, Access, Care, and Treatment Program shall be deemed*

1 to have met the training requirements described in subparagraph  
2 (B).

3 (d) Any person confined in a local detention facility who is  
4 capable of becoming pregnant shall be furnished by the county  
5 with information and education regarding the availability of family  
6 planning services and their right to receive nondirective, unbiased,  
7 and noncoercive contraceptive counseling and services. Each  
8 facility shall post this information in conspicuous places to which  
9 all persons confined in a local detention facility who are capable  
10 of becoming pregnant have access.

11 (e) Contraceptive counseling and family planning services shall  
12 be offered and made available to all persons confined in a local  
13 detention facility who are capable of becoming pregnant at least  
14 60 days, but not longer than 90 days, prior to a scheduled release  
15 date.

16 (f) Nothing in this section shall be construed to limit the access  
17 of a person who is confined in a local detention facility to any  
18 method of contraception that is prescribed or recommended for  
19 any medically indicated reason.

20 (g) For purposes of this section, "local detention facility" means  
21 any city, county, or regional facility used for the confinement of a  
22 person for more than 24 hours.

23 SEC. 5. If the Commission on State Mandates determines that  
24 this act contains costs mandated by the state, reimbursement to  
25 local agencies and school districts for those costs shall be made  
26 pursuant to Part 7 (commencing with Section 17500) of Division  
27 4 of Title 2 of the Government Code.

28 SECTION 1. Section 3409 of the Penal Code is amended to  
29 read:

30 3409. ~~(a) A woman inmate shall, upon her request, be allowed~~  
31 ~~to continue to use materials necessary for (1) personal hygiene~~  
32 ~~with regard to her menstrual cycle and reproductive system and~~  
33 ~~(2) birth control measures as prescribed by her physician.~~

34 ~~(b) The department shall furnish a woman inmate with~~  
35 ~~information and education regarding the availability of family~~  
36 ~~planning services.~~

37 ~~(c) The department shall furnish a woman inmate with family~~  
38 ~~planning services at least 60 days prior to her scheduled release~~  
39 ~~date. Upon request, the department or any other agency that~~  
40 ~~contracts with the department shall furnish her with the services~~

- 1 ~~of a licensed physician or with services necessary to meet her~~
- 2 ~~family planning needs at the time of her release.~~

O