

AMENDED IN SENATE APRIL 7, 2016

AMENDED IN SENATE MARCH 30, 2016

SENATE BILL

No. 1433

Introduced by Senator Mitchell

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1433, as amended, Mitchell. Incarcerated persons: contraceptive counseling and services.

Existing law requires that any woman inmate 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, 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 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 provide that any person incarcerated in state prison or ~~confined in a local detention facility~~ *facility, as defined*, 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. The bill would provide that any incarcerated person who is capable of becoming pregnant shall, upon request, have access to and be allowed to obtain contraceptive counseling and their choice of birth control method, as specified, unless medically contraindicated. The bill would require that all birth control methods approved by the United States Food and Drug Administration (FDA) be made available to incarcerated persons who are capable of becoming pregnant, except as provided, and would require California Correctional Health Care Services or the local detention facility to establish a formulary that consists of all of these birth control methods. The bill would provide that if a birth control method has more than one FDA-approved therapeutic equivalent, only one version of that method shall be required to be made available, unless another version is specifically indicated by a prescribing provider~~

and approved by the chief medical physician at the institution. The bill would require incarcerated persons to have access to nonprescription birth control methods without the requirement to see a licensed health care provider. The bill would require that any contraceptive service that requires a prescription, or any contraceptive counseling, provided to incarcerated persons capable of becoming pregnant, be furnished by a licensed health care provider who has been provided with training in reproductive health care and be nondirective, unbiased, and noncoercive. The bill would require health care providers furnishing contraceptive services to receive specified training. The bill would require a facility to furnish incarcerated 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 that contraceptive and family planning services be offered and made available to all incarcerated or confined persons capable of becoming pregnant at least 60 days, but not longer than 180 days, prior to a scheduled release date. By requiring ~~counties~~ city, county, or regional facilities 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: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. Section 3409 of the Penal Code is repealed.
- 2 ~~SEC. 2. Section 3409 is added to the Penal Code, to read:~~
- 3 ~~3409. (a) Any incarcerated person in state prison who~~
- 4 ~~menstruates shall, upon request, have access and be allowed to use~~

1 materials necessary for personal hygiene with regard to their
2 menstrual cycle and reproductive system. Any incarcerated person
3 who is capable of becoming pregnant shall, upon request, have
4 access and be allowed to obtain contraceptive counseling and their
5 choice of birth control at no cost.

6 ~~(b) (1) Except as provided in paragraph (2), all birth control~~
7 ~~methods and emergency contraception approved by the United~~
8 ~~States Food and Drug Administration (FDA) shall be made~~
9 ~~available to incarcerated persons who are capable of becoming~~
10 ~~pregnant, with the exception of sterilizing procedures prohibited~~
11 ~~by Section 3440.~~

12 ~~(2) If a birth control method or emergency contraception has~~
13 ~~one or more FDA-approved therapeutic equivalents, only one~~
14 ~~version of that method or emergency contraception shall be~~
15 ~~required to be made available unless another version is specifically~~
16 ~~indicated by a prescribing provider.~~

17 ~~(c) (1) All contraceptive counseling and contraceptive services~~
18 ~~provided to incarcerated persons who are capable of becoming~~
19 ~~pregnant shall be furnished by a licensed health care provider with~~
20 ~~a clinical background in reproductive health care and shall be~~
21 ~~nondirective, unbiased, and noncoercive. These services shall be~~
22 ~~furnished by the department or by any other agency which contracts~~
23 ~~with the department. Except as provided in paragraph (2), health~~
24 ~~care providers furnishing contraceptive services shall receive~~
25 ~~training in the following areas:~~

26 ~~(A) The requirements of this section.~~

27 ~~(B) Providing nondirective, unbiased, and noncoercive~~
28 ~~contraceptive counseling and services.~~

29 ~~(2) Providers who attend an orientation program for the Family~~
30 ~~Planning, Access, Care, and Treatment Program shall be deemed~~
31 ~~to have met the training requirements described in subparagraph~~
32 ~~(B).~~

33 ~~(d) Any incarcerated person who is capable of becoming~~
34 ~~pregnant shall be furnished by the department with information~~
35 ~~and education regarding the availability of family planning services~~
36 ~~and their right to receive nondirective, unbiased, and noncoercive~~
37 ~~contraceptive counseling and services. Each facility shall post this~~
38 ~~information in conspicuous places to which all incarcerated persons~~
39 ~~who are capable of becoming pregnant have access.~~

1 ~~(e) Contraceptive counseling and family planning services shall~~
2 ~~be offered and made available to all incarcerated persons who are~~
3 ~~capable of becoming pregnant at least 60 days, but not longer than~~
4 ~~90 days, prior to a scheduled release date.~~

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

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

9 *3409. (a) Any incarcerated person in state prison or a local*
10 *detention facility who menstruates shall, upon request, have access*
11 *and be allowed to use materials necessary for personal hygiene*
12 *with regard to their menstrual cycle and reproductive system. Any*
13 *incarcerated person who is capable of becoming pregnant shall,*
14 *upon request, have access and be allowed to obtain contraceptive*
15 *counseling and their choice of birth control methods, subject to*
16 *the provisions of subdivision (b), unless medically contraindicated.*

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

23 *(2) California Correctional Health Care Services or the local*
24 *detention facility shall establish a formulary consisting of all*
25 *FDA-approved birth control methods that shall be available to*
26 *persons specified in subdivision (a). If a birth control method has*
27 *more than one FDA-approved therapeutic equivalent, only one*
28 *version of that method shall be required to be made available,*
29 *unless another version is specifically indicated by a prescribing*
30 *provider and approved by the chief medical physician at the*
31 *institution. Persons shall have access to nonprescription birth*
32 *control methods without the requirement to see a licensed health*
33 *care provider.*

34 *(c) (1) Any contraceptive service that requires a prescription,*
35 *or any contraceptive counseling, provided to incarcerated persons*
36 *who are capable of becoming pregnant provided, shall be furnished*
37 *by a licensed health care provider who has been provided training*
38 *in reproductive health care and shall be nondirective, unbiased,*
39 *and noncoercive. These services shall be furnished by the facility*
40 *or by any other agency which contracts with the facility. Except*

1 *as provided in paragraph (2), health care providers furnishing*
 2 *contraceptive services shall receive training in the following areas:*

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

4 *(B) Providing nondirective, unbiased, and noncoercive*
 5 *contraceptive counseling and services.*

6 *(2) Providers who attend an orientation program for the Family*
 7 *Planning, Access, Care, and Treatment Program shall be deemed*
 8 *to have met the training requirements described in paragraph (1).*

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

16 *(e) Contraceptive counseling and family planning services shall*
 17 *be offered and made available to all incarcerated persons who*
 18 *are capable of becoming pregnant at least 60 days, but not longer*
 19 *than 180 days, prior to a scheduled release date.*

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

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

26 SEC. 3. Section 4023.5 of the Penal Code is repealed.

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

28 ~~4023.5. (a) Any person confined in a local detention facility~~
 29 ~~who menstruates shall, upon request, have access and be allowed~~
 30 ~~to use materials necessary for personal hygiene with regard to their~~
 31 ~~menstrual cycle and reproductive system. Any person confined in~~
 32 ~~a local detention facility who is capable of becoming pregnant~~
 33 ~~shall, upon request, have access and be allowed to obtain~~
 34 ~~contraceptive counseling and their choice of birth control at no~~
 35 ~~cost.~~

36 ~~(b) (1) Except as provided in paragraph (2), all birth control~~
 37 ~~methods and emergency contraception approved by the United~~
 38 ~~States Food and Drug Administration (FDA) shall be made~~
 39 ~~available to persons confined in a local detention facility who are~~

1 capable of becoming pregnant, with the exception of sterilizing
2 procedures prohibited by Section 3440.

3 (2) If a birth control method or emergency contraception has
4 one or more FDA-approved therapeutic equivalents, only one
5 version of that method or emergency contraception shall be
6 required to be made available unless another version is specifically
7 indicated by a prescribing provider.

8 (e) (1) All contraceptive counseling and provision of
9 contraceptive services to persons confined in a local detention
10 facility who are capable of becoming pregnant shall be furnished
11 by a licensed health care provider with a clinical background in
12 reproductive health care and shall be nondirective, unbiased, and
13 noncoercive. These services shall be furnished by the county or
14 by any other agency which contracts with the county. Except as
15 provided in paragraph (2), health care providers furnishing
16 contraceptive services shall receive training in the following areas:

17 (A) The requirements of this section.

18 (B) Providing nondirective, unbiased, and noncoercive
19 contraceptive counseling and services.

20 (2) Providers who attend an orientation program for the Family
21 Planning, Access, Care, and Treatment Program shall be deemed
22 to have met the training requirements described in subparagraph
23 (B).

24 (d) Any person confined in a local detention facility who is
25 capable of becoming pregnant shall be furnished by the county
26 with information and education regarding the availability of family
27 planning services and their right to receive nondirective, unbiased,
28 and noncoercive contraceptive counseling and services. Each
29 facility shall post this information in conspicuous places to which
30 all persons confined in a local detention facility who are capable
31 of becoming pregnant have access.

32 (e) Contraceptive counseling and family planning services shall
33 be offered and made available to all persons confined in a local
34 detention facility who are capable of becoming pregnant at least
35 60 days, but not longer than 90 days, prior to a scheduled release
36 date.

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

1 ~~(g) For purposes of this section, “local detention facility” means~~
2 ~~any city, county, or regional facility used for the confinement of~~
3 ~~a person for more than 24 hours.~~

4 ~~SEC. 5.~~

5 *SEC. 4.* If the Commission on State Mandates determines that
6 this act contains costs mandated by the state, reimbursement to
7 local agencies and school districts for those costs shall be made
8 pursuant to Part 7 (commencing with Section 17500) of Division
9 4 of Title 2 of the Government Code.