

Senate Bill No. 1433

CHAPTER 311

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

[Approved by Governor September 12, 2016. Filed with
Secretary of State September 12, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1433, 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 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 any incarcerated person in state prison 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 the California Correctional Health Care Services 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 facility. 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 persons capable of becoming pregnant at least 60 days, but not longer than 180 days, prior to a scheduled release date.

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

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 Section 3409 of the Penal Code is repealed.

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

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

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

(2) The California Correctional Health Care Services shall establish a formulary that consists of all FDA-approved birth control methods and that shall be available to persons specified in subdivision (a). 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 facility. Persons shall have access to nonprescription birth control methods without the requirement to see a licensed health care provider.

(c) (1) Any contraceptive service that requires a prescription, or any contraceptive counseling, provided to incarcerated persons who are capable of becoming pregnant, shall be furnished by a licensed health care provider

who has been provided with training in reproductive health care and shall be nondirective, unbiased, and noncoercive. These services shall be furnished by the facility or by any other agency that contracts with the facility. Except as provided in paragraph (2), health care providers furnishing contraceptive services shall receive training in the following areas:

(A) The requirements of this section.

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

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

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

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

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