


# REPRODUCTIVE HEALTH BEHIND BARS IN CALIFORNIA



STRONG  
FAMILIES

A REPORT FROM THE ACLU OF CALIFORNIA, JAN 2016



“I told [the court deputy] that I was pregnant so I couldn't be handcuffed behind my back and that I had a paper with me to show that I was pregnant. He responded, 'I don't care.'”

“I was not able to get [an abortion] procedure until almost two months after I first asked...

They should have given me the abortion earlier, when I would not have been so attached and the procedure would have been less painful.”

“Being forced to submit to a pregnancy test against my will was not about my health. It was invasive, offensive, and humiliating.”

“About a week or two into my stay at [facility] I felt sharp pains in my stomach and I started panicking, so I pushed the emergency button. I [have a] high-risk [pregnancy, but] I waited for 30 minutes before I was taken out of my cell. I was told that I would have to wait until the next day to be seen by the doctor.”



The authors of this report and the accompanying *Reproductive Health Care in California Jails: A Tool to Assess and Reform Policies and Practices* are Melissa Goodman, Ruth Dawson, and Phyllida Burlingame.

Contributing authors and researchers: Alicia Walters, Christina Boothman, Liz McCaman, Elizaveta Afanasieff, Julie Veroff, Sarah Schear, Arnetta Rogers, Karla Aguilar, Lindsey Zwicker, Alexandra Stupple

Advisory Board: Carolyn Sufrin, Karen Shain, Alicia Walters, Robin Levi

Design and Layout: Gigi Pandian, Daniela Bernstein

Cover art: Micah Bazant for Strong Families

We are grateful for the advice of the ACLU of California's Criminal Justice and Drug Policy team, in particular Margaret Dooley-Sammuli, Micaela Davis, and Jolene Forman. This report also benefited from conversations and collaboration with other organizations in California that work at the intersection of reproductive justice and criminal justice: Legal Services for Prisoners with Children, Justice Now, California Coalition of Women Prisoners, and Forward Together.

*Reproductive Health Behind Bars in California* is available online at [www.aclunc.org/ReproductiveHealthBehindBars\\_Report](http://www.aclunc.org/ReproductiveHealthBehindBars_Report).

An accompanying tool, *Reproductive Health Care in California Jails: A Tool to Assess and Reform Policies and Practices*, is available online at [www.aclunc.org/ReproductiveHealthCAJails\\_Toolkit](http://www.aclunc.org/ReproductiveHealthCAJails_Toolkit).

We thank the funders and donors whose support made this report possible.

The ACLU of California is a collaboration of the ACLU affiliates in California. Our statewide Reproductive Justice Project works to ensure equal access to reproductive and sexual health care and education, and to create the conditions in which all Californians' decisions about intimate relationships and reproduction are respected, valued, and supported.

Published by the ACLU of California  
January 2016

# Reproductive Health Behind Bars in California

# Reproductive Health Behind Bars in California

## Contents

<b>Introduction</b> .....	4
<b>Common Barriers to Reproductive and Sexual Health</b> .....	6
Forced Pregnancy Testing.....	6
Barriers to Abortion Access .....	8
Denial of Prenatal and Postpartum Care and Accommodations .....	11
<i>Illegal Shackling and Dangerous Use of Force</i> .....	11
<i>Lack of Adequate or Timely Prenatal Care</i> .....	13
<i>Insufficient Dietary and Physical Accommodations</i> .....	15
<i>Labor and Delivery without Privacy or a Support Person</i> .....	16
Unmet Health Needs After Giving Birth .....	17
<i>Lack of Bonding Time and Separation Effects</i> .....	17
<i>Lack of Lactation Accommodations and Support</i> .....	19
Ignoring Menstruation-Related Hygiene Needs .....	20
Barriers to Contraception Access .....	21
Coercive Sterilization.....	22
Insufficient Protection from Sexual Assault .....	23
Inadequate Data Collection and Oversight of Medical Contractors.....	25
<b>Recommendations</b> .....	27
<b>Endnotes</b> .....	29

## Introduction

California's egregious over-incarceration problem has led to a series of structural changes in the state's criminal justice system over the past five years. Most notably, Public Safety Realignment ("realignment") in 2011 transferred authority for most people convicted of low-level, non-violent offenses from the state to the counties, and Proposition 47 of 2014 reduced some low-level drug and property crimes from felonies to misdemeanors. While a primary goal of these structural changes is to incarcerate fewer people overall, one effect has been to change the incarcerated population in county jails. Notably, women, who are twice as likely to be incarcerated for petty theft and 63 percent more likely to be incarcerated for simple drug possession than men,<sup>1</sup> are now primarily held in county jails. In the first quarter of 2015, nearly two-thirds of incarcerated women in California were in county jails<sup>2</sup> and slightly more than one-third were in state prison,<sup>3</sup> as compared to almost equal numbers in each type of facility at the end of 2010.<sup>4</sup>

California jails are required by law to provide necessary reproductive health care, as well as information and education on certain reproductive health topics, protection from sexual assault, and specific pregnancy-related accommodations. But an examination of the policies and practices of California's county jails, as described in this report, suggests that incarcerated people are not getting the care they need and that is mandated by law. While cisgender<sup>i</sup> men undeniably also have reproductive health needs, this report focuses particularly on the needs of women (both cisgender and transgender) and of transgender men, who often need reproductive health care traditionally associated with women.

Women make up a significant minority of the incarcerated population in California: 9,594 women were incarcerated in county jails in March 2015, representing 13 percent of the total jail population.<sup>5</sup> This number includes many transgender men, who are overwhelmingly held in women's facilities and classified as women, but it excludes the vast majority of transgender women incarcerated in California jails, who are most often locked up in men's facilities and classified as male. This is because almost all California jails continue to place transgender people in gendered facilities based not on their gender identity, gender expression, or where they feel most safe, but rather their genital anatomy. According to the most recently available data, there were approximately 1,700 transgender adults in U.S. jails.<sup>6</sup> While statewide data is unavailable, we do know that transgender people are disproportionately represented in the criminal justice system, with 21 percent of transgender women and 10 percent of transgender men reporting having served time in jail or prison compared to 2.7 percent of the general population.<sup>7</sup>

Our criminal justice system does not sufficiently consider or address the particular circumstances of justice-involved women or transgender men. For instance, as documented in the report *Bias Behind Bars* by the Women's Foundation of California, as many as 85 to 90 percent of women report having been victims of sexual or domestic abuse prior to incarceration, significantly more than the rate reported by men. Women's circumstances are also different when they leave jail or prison: they are

---

<sup>i</sup> Cisgender refers to people whose gender identity—one's inner sense of being male, female, both, neither, or something else—is the same as their assigned sex at birth. Transgender refers to people whose gender identity differs from their assigned or presumed sex at birth.

less likely than men to be able to find employment or stable housing upon release. However, successful reintegration of women into their communities is essential not only for them but also for their families: 62 percent of women in state prisons have minor children, as compared to 51 percent of men nationally, and 64 percent of those mothers lived with their children prior to incarceration.<sup>8</sup> In fact, 1.3 million children have mothers who are incarcerated in the United States, and five percent of women in jails nationwide are pregnant at admission.<sup>9</sup>

Transgender women experience particular barriers within the system, including being held in men's facilities and treated as men against their will, an increased risk of being held in solitary or segregated custody without access to work or programming, and a nearly 60 percent chance<sup>10</sup> of being sexually assaulted. Both transgender women and men experience denial of transition-related health care and rampant discrimination in employment, government services, and health care when they leave jail.

The Public Safety Realignment Act of 2011 encourages counties to develop community-based alternatives to incarceration for low-level crimes. And in 2014, voters overwhelmingly approved Prop 47 at the ballot box to reduce incarceration for low-level drug and property crimes and invest the savings into community services to address underlying issues, including substance use disorders and mental health issues. As shown in the ACLU's report *Changing Gears: California's Shift to Smart Justice*,<sup>11</sup> counties still have a long way to go to expand access to alternatives to incarceration. Access to alternatives is particularly important for cisgender women and transgender people, because it would most effectively address the array of problems they experience behind bars.

Distressingly, many cisgender women and transgender people who would be eligible for alternative programs now find themselves not only incarcerated, but incarcerated in county-level facilities that may not have policies and programming that meet these populations' particular reproductive health needs.

While institutions of incarceration should, of course, be meeting all the health needs of people behind bars, reproductive and sexual assault health care needs are often unique and time-sensitive and do not correspond well to the traditional "sick-call" process for obtaining medical care. For example, a woman who discovers she is pregnant when behind bars must decide whether to keep or terminate the pregnancy. If she decides to terminate the pregnancy, she must be able to access abortion. If she decides to carry the pregnancy to term, she must obtain prenatal care, give birth, and make arrangements for her baby after birth. All of these actions must, by necessity, take place within a set timeframe. A transgender man who is sexually assaulted behind bars needs urgent medical and mental health care, possibly time-sensitive emergency contraception and post-exposure prophylaxis, and prompt forensic exams to preserve evidence of a crime.

*Reproductive Health Behind Bars in California* highlights a number of particular problems that people in California jails experience with respect to reproductive health care and prevention of sexual assault. It is based on information from a variety of sources: complaints from and interviews with women (both cisgender and transgender) currently and formerly incarcerated in county jails; experience by the ACLU of California in conducting advocacy with multiple county jails on behalf of people with unmet reproductive health care needs; a research project using Public Records Act requests to obtain policies and data about reproductive health care and sexual assault from a geographically diverse sample of five California county jails of different sizes; and a separate collection of selected jail policies. In addition, this report is informed by research and advocacy conducted by partner

organizations working with and on behalf of currently or formerly incarcerated people, such as Legal Services for Prisoners with Children and Justice Now.

## Common Barriers to Reproductive and Sexual Health

### Forced Pregnancy Testing

“Being forced to submit to a pregnancy test against my will was not about my health. It was invasive, offensive, and humiliating.” – Nancy Mancias

Nancy Mancias was arrested during a political demonstration in Oakland in 2012 and, despite attempting to refuse, was required to take a pregnancy test upon arrival at the jail facility. The test was administered by an officer at the jail, not medical personnel; she was not provided any other medical screening, and she was never provided the result of her pregnancy test. She was released after eight hours in custody.

Jane Harman was also arrested during a political protest, in 2010. She was required to take a pregnancy test even after telling jail staff that she could not possibly be pregnant, as she was 69 at the time. She, too, had her test administered by an officer and was never given any other medical screening or health care during her overnight stay at the jail, despite asking for insulin for her diabetes. She, too, was never given the results of her pregnancy test. The experience left her feeling as if the only purpose of the pregnancy test was to embarrass her and invade her privacy.

It is valuable for jails to have a good understanding of new arrivals’ medical conditions so as to provide appropriate care. The American College of Obstetrics and Gynecology thus recommends that women<sup>ii</sup> who are entering jail or prison be offered pregnancy testing as part of a comprehensive health exam.<sup>12</sup> However, it is essential that people be allowed to opt out of pregnancy testing if they so choose. Mandatory pregnancy testing violates privacy rights and intrudes into one of the most private areas of people’s lives—reproductive decision-making.<sup>13</sup> All people, including people who are incarcerated, have the right to refuse medical care and testing.<sup>14</sup>

---

<sup>ii</sup> This report strives to use gender-neutral language whenever possible. However, most applicable laws, medical best practice statements, and county policies we reference use gendered terminology when discussing pregnancy and reproductive health care. Where we are describing a law, best practice standard or county’s policy and it uses gendered terminology, we will use that terminology as well to be accurate in our description. But as noted above, in our recommendations, and our related policy tool for jail administrators, it is important for jails to write and enforce their policies in a way that ensures that all people who need pregnancy or other reproductive health care get the care that they need and that no one is denied care they need because of their gender identity or gender expression, which is prohibited by state and federal law.



Until recently, Alameda County conducted mandatory pregnancy testing for women held in its county jails. In 2014, the ACLU of California and attorneys from Covington and Burling sued the Alameda County sheriff on behalf of Nancy Mancias and Jane Harman to stop coerced pregnancy testing. In settling the case in 2015, Alameda County agreed to modify its policies and protocols to state clearly that pregnancy testing is optional. As part of the settlement, “the parties agree that no woman will be required to submit to a pregnancy test, absent a court order or an emergency in which the patient is not capable of providing consent.” In addition, pregnancy tests will only be administered by medical staff, and staff will be trained to ask women for consent by using the following phrase: “We’d like you to take a pregnancy test so you can get the most appropriate care. Is that okay with you?” Signs in several languages will be posted in the intake nurses’ offices informing women that pregnancy testing is optional unless ordered by a judge. Finally, written materials provided to people held in Alameda County jails will be updated to say that the pregnancy test is not required.

The outcome in Alameda County will protect arrested women’s rights and promote their health. But the problem of coercive pregnancy testing may be more widespread. After the ACLU case against Alameda was publicized, we received a complaint from another Bay Area woman who stated that she, too, was subjected to mandatory pregnancy testing in a different county. Policies from several other counties that we reviewed also give rise to concern. For example, policy language that reads, “all women will have a urine pregnancy test done” does not make it sufficiently clear that women can opt out of this testing and could indicate a mandatory practice similar to what was previously done in Alameda County.

In addition to ensuring that people can opt out of pregnancy testing, California law requires that jails allow any woman in a local detention facility to summon and receive the services of any physician or surgeon of her choice in order to determine whether she is pregnant. Women must pay any expenses occasioned by the services of a physician and surgeon whose services are not provided by the facility. Women must also be allowed to request such a pregnancy test at any point of incarceration.<sup>15</sup>

Pregnancy testing for people behind bars, when integrated into other medical screening or requested by the incarcerated person, serves a valid health purpose. But there is a variety of reasons that arrested people, particularly those who are only to be held for a limited time, may not want to learn of their pregnancy status in jail instead of in the privacy of their own homes or doctors’ offices. When the pregnancy testing is divorced from other health care and forced, rather than serving a health care purpose, it can instead represent a punitive and unlawful violation of their rights and privacy.

## Barriers to Abortion Access

“I was not able to get [an abortion] procedure until almost two months after I first asked. At the time of my abortion, I was 19 weeks pregnant. They should have given me the abortion earlier, when I would not have been so attached and the procedure would have been less painful.”

When Alma\* was first incarcerated in a county jail, she knew that she was pregnant and she planned to have an abortion. She requested the abortion when she was 11 weeks pregnant and was told that the jail had a policy of not paying for second trimester abortions and that she was almost at the point of pregnancy where she’d have to pay for the procedure herself.

Alma was eager to get the abortion procedure done, but one month later, she had still heard nothing in response to her request. She went back to the clinic after experiencing terrible stomach pains. Once again, she asked for an abortion. She was told that since she had reached the second trimester, she or her family would have to pay \$700 for the abortion and the payment would need to be made before she could have the procedure. The nurse made judgmental remarks about Alma planning to have the procedure when her pregnancy was “so far along.”

During the next month, Alma’s family sought to raise money for the abortion, racing against the clock as the pregnancy progressed and the procedure became more costly with each passing week. At the same time, jail medical staff attempted to persuade her to carry to term and place the child for adoption; they repeatedly delayed her abortion, encouraging her to wait to make a decision about abortion until after her next court date.

Finally, Alma was able to obtain her abortion two months after initially requesting it, but by that time it was a more complicated, painful procedure, and she had developed an emotional connection to the fetus that was upsetting for her. Despite the time delay and stigmatizing treatment by jail staff, Alma remained steadfast: “I knew that I absolutely did not want to give birth while incarcerated, and wanted an abortion.”

\*All names from here on are pseudonyms to protect the women’s identities.

Once someone incarcerated is determined to be pregnant—either by learning of their pregnancy through their initial health screening or by having medical confirmation of a pregnancy they already knew about—they have a decision to make, just as pregnant people outside of jail do. They must decide whether to carry the pregnancy to term and either parent the child or choose adoption, or whether to terminate the pregnancy through abortion. A person’s right to terminate a pregnancy is not affected by their incarceration status; they must be allowed to access abortion at any point prior to fetal viability (typically at 24 weeks of pregnancy) or after viability when an abortion is necessary to protect their life or health.<sup>16</sup>

Jails also cannot deny or interfere with a person’s right to an abortion, or impose any condition or restriction upon the obtaining of an abortion. Impermissible restrictions include, for example, imposing gestational limits inconsistent with California law, unreasonably delaying access to the

procedure, requiring court ordered transport, or requiring people to pre-pay or prove their ability to pay for the procedure.<sup>17</sup> Further, jails and jail staff cannot coerce, and should not otherwise influence, an incarcerated person to have an abortion procedure.

In addition, the National Commission on Correctional Health Care states that pregnant incarcerated women, upon learning of their pregnancy, should be provided comprehensive and unbiased options counseling that includes information about prenatal care, adoption, and abortion.<sup>18</sup> The National Commission is an independent, nonprofit organization that evolved out of the American Medical Association and is “committed to improving the quality of health care in jails, prisons and juvenile confinement facilities,” “with support from the major national organizations representing the fields of health, law, and corrections.”<sup>19</sup>

But, our research indicates that most jail policies and practices work from the assumption that a person is going to carry their pregnancy to term, starting from the moment the pregnancy is determined. For example, the perinatal protocols of one county start with pregnancy testing, proceed to prenatal care, to delivery, and to postpartum care; they never contemplate the possibility that the pregnant person might wish to terminate the pregnancy. The same county does have policies relating to both abortion and options counseling, but they appear to be on a separate track, perhaps available only to those pregnant people who know to ask for them. It is thus far from clear that all people who learn they are pregnant while in jail are given full options counseling. If they are, they may in fact be getting biased counseling, as some of the policies that do include options counseling also used loaded terminology such as “unborn child” to describe pregnancy even in its earliest form.

Additionally, jails often apply special armbands or ribbons to people as soon as they are identified as pregnant, without regard to whether the person is intending to terminate the pregnancy or how removal of the armband will publicly reveal that person’s decision. While for health reasons it is valuable for jail staff to be made aware of a person’s pregnancy, public identification of pregnant people implicates their privacy rights and can reveal highly personal and confidential health information in the event that the person terminates the pregnancy or miscarries. At a minimum, pregnant people should be given the option of not wearing an armband and utilizing an alternate method for keeping staff informed. One county we reviewed maintained people’s pregnancy information on their housing card rather than use an armband, so as to protect each person’s privacy.

Most problematic, some jails have policies and practices that create confusion and are direct barriers to accessing abortion. First and foremost, many jails base their abortion policies on repealed laws and thus draw inappropriate distinctions between “elective” and “medically necessary” abortions and narrowly restrict the circumstances when pregnant people are permitted to have an abortion. These can lead to people being denied access to procedures because they are mistakenly understood to be “elective” or the people are found “ineligible.” Because pregnancy is a medical condition, prenatal care is medically indicated for people who decide to continue their pregnancy, and abortion is medically necessary for those who decide to terminate their pregnancy. Thus, drawing distinctions between “elective” and “medically necessary” abortion is a violation of pregnant people’s rights and can be a practical barrier to accessing abortion services. For example, we have seen jails use the false “elective” label to explain why they take some abortions less seriously, and others even have illegal policies against “elective” abortion procedures.

For example, one county's policy we reviewed stated that "[f]emale prisoners requesting a therapeutic abortion will be interviewed by Detention Health Services health care staff to determine eligibility" and that a woman was eligible only if medical staff found that "there [was] substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother [or the] pregnancy resulted from rape or incest." This policy, which was in force until early 2014, codified provisions of the 1967 Therapeutic Abortion Act that have been unconstitutional and unenforceable for over 40 years, and which were repealed in 2002 and replaced by the Reproductive Privacy Act of 2003. Upon obtaining this policy, we explained current law to the county and pointed out that the policy illegally vested discretion in jail officials to determine which pregnant people could access abortion and unconstitutionally limited abortion access. The county then promptly re-wrote its policy to comply with current law.

Additionally, some jails have policy language or practices that directly impose limits on who can access abortion. For example, we know of one county that was requiring women to prove they can pay for a procedure before allowing them to obtain it. For many people this is simply not possible. Payment barriers of this sort are prohibited under state and federal law, both those laws that specifically protect people's access to abortion and the California law that makes county jails responsible for providing necessary medical care to people in their custody and prohibits refusal to provide necessary care based on inability to pay.<sup>20</sup> Similarly, some jails have policies stating that women need a court order before they can get transport to a hospital or clinic for the procedure, a requirement that courts have uniformly found unconstitutional as applied to abortion care.<sup>21</sup>

Further, some jails have policies and practices that illegally give jail staff discretion to decide if a pregnant person can have an abortion. For example, according to one county's policy, women seeking to terminate their pregnancies must fill out a form explaining in detail why they want an abortion. Another county's policy indicated that a woman needed a mental health clearance before being able to obtain an abortion. A third county's policy determined eligibility for later abortions based not on viability or the health of the woman, as established by law, but instead on whether the contracted health provider states it can provide the procedure safely. The policy does not contemplate identifying another provider in this situation and thus protecting the person's right to abortion. Upon learning from us why this element of its policy was problematic, the county in question removed it. These policies are problematic not only because abortion access is a right for these pregnant people, but also because they delay a person's abortion procedure. Timely access to abortion is important because though abortion is a very safe procedure, the risk of complications increases and the availability of trained providers decreases as a pregnancy progresses.

While some jails impose barriers on people seeking abortions, other jails or jail staff may employ practices that influence pregnant incarcerated people to have abortions. For example, interviews with one jail administrator indicated that jail staff would encourage certain women—those with multiple children or those with chemical dependencies—to have an abortion. This type of undue interference is as egregious as refusing to allow those pregnant people to access abortions. Pregnant people who are incarcerated have the right to determine what to do with their pregnancy, whether they decide to carry to term or have an abortion, just as people outside of jail do.

## Denial of Prenatal and Postpartum Care and Accommodations

### *Illegal Shackling and Dangerous Use of Force*

“I told [the court deputy] that I was pregnant so I couldn’t be handcuffed behind my back and that I had a paper with me to show that I was pregnant. He responded, ‘I don’t care.’”

Beth, a 19 year-old incarcerated in a county jail, was repeatedly shackled during her pregnancy on trips between jail and court. One sergeant, after telling Beth “I can handcuff you in the back if I want to—being pregnant is not an excuse,” left her handcuffed to a bench for four hours, restricting her movement in a way that is very uncomfortable in pregnancy.

Beth’s shackling continued during labor and delivery of her baby. Although the nurse told the deputy accompanying Beth to the hospital that her ankle cuff would need to be removed when she went into labor, she nevertheless was forced to wear it: “The cuff was very heavy and had a long chain attached. I frequently had to get up and use the bathroom; it was very uncomfortable and difficult dragging the heavy cuff and chain as I walked from the bed to the bathroom. I begged the deputy to un-cuff my ankle. I said, ‘I am not going anywhere. It’s so heavy. Please take it off.’ After about two hours, she removed the cuff. This made it much easier to lie in bed comfortably and to use the bathroom. I felt like I could focus on having my baby now.”

Another woman, Christina, was also re-cuffed shortly after delivering her baby, despite the fact that she was still bleeding and needed to use the bathroom frequently, and even though the nurse told the deputy to be careful because she had Velcro straps on her legs to increase circulation. “The way I was treated after my delivery was humiliating. I understand that I’m incarcerated, but I’m still human. I’m a mother and I just wanted to be treated with some dignity. It was a horrible experience.”

Pregnant people are prone to falls due to changes in their center of gravity and loosening of their joints, among other physiological changes.<sup>22</sup> Restraining pregnant people improperly poses serious medical risks that could lead to greater stress, complications, falls, and even miscarriage.<sup>23</sup>

Over the past decade, advocates in California, including Legal Services for Prisoners with Children and the ACLU, worked hard to reform the dangerous ways in which pregnant people in California jails and prisons were routinely restrained. Thanks to these efforts, shackling of pregnant people was sharply restricted in California by legislation enacted in 2012. Jails now cannot shackle or restrain pregnant people with leg irons, waist chains, or handcuffs behind the body during any point in pregnancy.<sup>24</sup> During labor, delivery, or recovery from delivery, additional restrictions apply: people cannot be restrained by the wrists, ankles, or both, unless it is deemed necessary for the safety of the incarcerated person, the staff, or the public.<sup>25</sup> Any restraints used on the person at any point in pregnancy must be removed when a medical professional in charge of the individual’s care determines that such removal is necessary.<sup>26</sup> Jails have to advise pregnant people about these limits.<sup>27</sup>

Beyond these specific requirements that apply equally to California jails and prisons, prisons are also obligated by law to restrain pregnant people in the least restrictive way possible during transport, a protection that should be extended to people held in jails as well.<sup>28</sup> Finally, the National Commission on Correctional Health Care's standard, *Counseling and Care of the Pregnant Inmate*, states that restraint of women during pregnancy and the postpartum period "should be avoided as much as possible and used only with consultation from medical staff."<sup>29</sup>

Research conducted by Legal Services for Prisoners with Children, released in its 2014 report *No More Shackles*, found that only 21 of the 55 California counties analyzed were in compliance with the law enacted in 2012; another 32 counties were in partial compliance, and two counties were entirely non-compliant.

Despite the progress made by counties in adopting policies that reflect California's current law, we continue to receive reports that pregnant people are handcuffed behind their backs, improperly restrained during labor, and otherwise shackled in ways that violate the law. Moreover, we have spoken with some pregnant incarcerated women who were not properly informed that there were restrictions on how they should be restrained. One woman who did know her rights and had been pregnant in a county jail reported to us that when she informed jail staff of the legal restrictions against shackling they harassed her and refused to restrain her properly.

Just like restraints, use of force against pregnant people can cause negative health outcomes and potentially harm the pregnancy. Disturbingly, we encountered one county whose policy contemplated using a taser on pregnant women. Tasers are weapons that temporarily paralyze a person through electric shocks. Tasers carry various health risks even to a healthy non-pregnant person. Taser International, which produces the majority of tasers on the market, even included a warning on its website that the physical results of tasing can "elevate the risk(s) of serious injury or death" in various circumstances, including when the person tased is pregnant.<sup>30</sup> The health risks should place this practice definitively out of bounds, but there is currently no law or standards that explicitly prohibit the use of Tasers on pregnant people.

### *Lack of Adequate or Timely Prenatal Care*

“About a week or two into my stay at [facility] I felt sharp pains in my stomach and I started panicking, so I pushed the emergency button. I thought that I would be taken to a hospital right away because of how strong my pains were and because I [have a] high-risk [pregnancy]. I waited for 30 minutes before I was taken out of my cell but instead of being taken to the hospital, I was sent to the clinic. There were no OB nurses or doctors in the clinic at that time and I was told that I would have to wait until the next day to be seen by the doctor.”

Destiny had a high-risk pregnancy due to a previous still-born delivery, but the jail where she was incarcerated did not give her the timely care she needed. When Destiny was able to see a doctor after her frightening, painful episode, she tried reminding the doctor of her need for care:

“I told the doctor during this appointment that my pregnancy was classified as high-risk and that I needed to be seen every two weeks. She told me not to be concerned and that I would be seen every two weeks, but it took an entire month before I was seen again. At that next appointment I asked the nurse why it had taken so long to schedule my appointment and her response was ‘You’re here now, so let’s just get you taken care of.’”

Erica, in another facility, had a similar experience when faced with an emergency in her 16<sup>th</sup> week of pregnancy: “I woke up one morning and felt a sharp shooting pain in my stomach. It was a level nine on a scale of 10 so I asked the morning pill call nurse if I could be taken to the mini-clinic to be checked out. When I got to the mini-clinic, three different nurses tried to locate my baby’s heartbeat but were unable to detect it. I immediately requested an ultrasound, but the nurses told me that there were no OB/GYN’s on shift and sent me back to my cell. I was really scared because I didn’t know what was going on and I started getting more depressed as time went by because I didn’t know if my baby was alive or dead.”

Erica also was not able to obtain a time-sensitive Rhogam injection until three weeks after she was supposed to receive it, despite repeated requests. She had learned after a previous miscarriage that the shot was critical for her to have a healthy pregnancy due to her blood type.

People who are pregnant need regular prenatal care to have a healthy pregnancy. California law recognizes this by requiring that every pregnant woman in a county jails gets (1) an assessment of the scope of medical services she needs and receives the prenatal services she needs, (2) prenatal vitamins, and (3) education about pregnancy, childbirth and infant care.<sup>31</sup> Pregnant people also need timely and regular prenatal exams.

The rules for state prisons require pregnant people to receive their first prenatal appointment within seven days and then regular visits thereafter as follows: visits every four weeks in the first trimester up to 24-26 weeks gestation; every three weeks thereafter up to 30 weeks gestation; every two weeks thereafter up to 36 weeks gestation; and weekly after 36 weeks through delivery.<sup>32</sup> The rules for state prisons also require integration of mental health and counseling services into pregnancy care.<sup>33</sup>

These specific requirements do not, unfortunately, apply to county jails although they are consistent with the medical best practice jails should be following. Adequate and timely prenatal care is also, of course, medically necessary care that jails have a constitutional obligation to supply.<sup>34</sup>

At least one county we researched through our Public Records Act (PRA) project follows the prenatal visit schedule required in state prisons and recommended by the American College of Obstetricians and Gynecologists (ACOG). With regard to education, nearly all of the counties in our PRA sample provided some form of education about pregnancy and childbirth, but it was not always clear whether those programs included infant care or parenting skills. None of the policies in our PRA sample discussed integration of mental health care into pregnancy care.

But despite jails' clear obligation to provide adequate and timely prenatal care, we have received multiple complaints from women incarcerated in county facilities that they did not obtain prenatal visits on a regular schedule, that they endure great delays to get those appointments, or that they have to rely on the as-needed sick call system to get this care. On the other hand, at least one county we researched through our Public Records Act (PRA) project follows the schedule required in state prisons and recommended by the American College of Obstetricians and Gynecologists (ACOG). In addition, as demonstrated by the stories of Destiny and Erica, when experiencing a potential emergency relating to the pregnancy, pregnant people are often not directed in a timely way to a qualified health professional who can triage their symptoms. This is true not only for pain but in the event of bleeding—we have heard of pregnant people who, upon reporting bleeding to jail staff, were told that the bleeding wasn't heavy enough to call the medical staff, when in fact any bleeding during pregnancy requires evaluation by a qualified health professional.



### *Insufficient Dietary and Physical Accommodations*

“Sleeping in that cell was awful. I was assigned to the top bunk even though pregnant inmates are supposed to be assigned to bottom bunks. When I would complain to the deputies that I shouldn’t be on the top bunk, they would tell me to put my mattress on the floor. The floor was disgusting so that wasn’t an option for me. So instead, I would lay down in the middle of my bunk trying not to move around because I didn’t want to accidentally touch any of the walls in my sleep. It was hard to fall asleep every night because it was always really cold in the medical ward. I wasn’t given any socks or even a bra so it was especially difficult to try and keep warm. When I would ask deputies for more blankets they would say that two blankets were enough and I couldn’t have any more. They never seemed to care that I was freezing.” – Fernanda

Another woman, Destiny, who had a high-risk pregnancy, shared her concerns about her insufficient prenatal diet: “I told [the doctor] that I was concerned because I had already lost three pounds since being here. This was the first time I was seen by a doctor since arriving at [facility]. She asked me if I was eating and I told her that I’m trying to but that the prenatal diet was really hard to eat. The options we have are an evening snack that consists of tuna, a Swiss cheese sandwich, or chicken. I don’t eat seafood and the smell from the cheese and the chicken makes me extremely nauseated so I was just eating peanut butter and jelly sandwiches... I am even more stressed out about keeping my baby healthy because there are very few nutritious options available through commissary. There is a poster on the wall next to the commissary ... which lists ‘healthy items’ that you can order but that list is a joke. The options that are listed as healthy include: lemon drop candies, cream-filled chocolate cupcakes, Swiss Rolls, and Now and Later candies.”

Pregnant people need greater than normal amounts of food and endure bodily strains that cause serious physical discomfort. More than just additional calories, pregnant people need a healthy, nutritious diet. Just as importantly, there are a number of foods that pregnant people are routinely advised to avoid that could harm their pregnancy or cause serious illness during pregnancy, such as fish high in mercury (like tuna), processed lunch meats, unpasteurized milk and cheese, and undercooked eggs, meat, and fish.<sup>35</sup> Recognizing the importance of a healthy and filling prenatal diet, California law requires jails to provide pregnant people a balanced, nutritious diet and vitamins, both approved by a doctor.<sup>36</sup>

Jails do recognize at a policy level the importance of nutrition for pregnant people: almost all jail policies we have reviewed concerning pregnant women indicate that women should receive a “special” or “prenatal” diet that is balanced and nutritious. Three policies we have seen say that pregnant women should receive a supplemental snack around bedtime. At least two state that pregnant women should receive additional food or calories. In our PRA project, four of the five counties’ policies specifically discussed how pregnant women will be given prenatal vitamins.

But the policies typically fail to provide specifics regarding prenatal diets; they also don’t include a process to ensure that pregnant people actually receive what they need in a timely and regular fashion. This lack of specificity can translate into problems in practice.

We have received numerous complaints from pregnant women incarcerated in county jails about insufficient amounts of food they receive and regularly feeling the need to supplement with snacks in the commissary or vending machines, which are both expensive and unhealthy. We have also received complaints that women have been given inedible or spoiled food that they cannot eat or that has made them sick. One woman reported to us that she was repeatedly served a particular food she was allergic to, with no other options but commissary or vending snacks available. Some other women have complained that it took weeks and sometimes months to get their special prenatal diets, even after their doctors had put in the order.

Pregnant people also need the opportunity to frequently drink potable water so that they do not become dehydrated. We have received complaints from women in at least one county jail that they did not feel comfortable drinking the water most available to them. As one woman told us: “The water from the sink in my cell would come out a light brown color so I refused to drink it. Instead, I would wait for the pill call nurses to come by because they always brought hot water with the meds and I would only drink that water... I’ve been dehydrated multiple times since being at [facility] and both [the] Nurse Practitioner and [the] doctor have treated my dehydration with IV’s.”

Beyond diet, pregnant people in jail need a range of other accommodations to deal with the intense physical demands of pregnancy. These include getting a lower-tier housing assignment or bottom bunk so that they can avoid the strain and risk of falling that comes with frequently climbing stairs or steps up to a bunk.<sup>37</sup> Three of the county policies we have reviewed discuss the need for a lower bunk but the rest have been silent. We have received complaints from several women that facilities they were in did not accommodate their housing needs.

In addition, pregnant people may need items such as larger clothing, larger shoes, additional pillows, or extra mattresses to make their beds less painful. And on the most fundamental level, pregnant people need the ability to access the toilet as often as necessary to handle the increased frequency of urination during pregnancy. Yet very few of the jail policies on pregnancy we have seen explicitly contemplate the need for these kinds of accommodations. One county revised its policy after ACLU advocacy and now provides these accommodations. Another in our PRA sample provides an extra mattress to pregnant women late in pregnancy. Unfortunately, stories we’ve heard from women suggest that many pregnant incarcerated people don’t get these basic accommodations for the physical needs and discomforts of pregnancy.

### ***Labor and Delivery without Privacy or a Support Person***

Labor and delivery is a difficult, stressful, and scary time for many people, even when they are surrounded by loved ones. But the vast majority of pregnant people incarcerated in county jails must give birth without any loved ones or friends there, with a doctor they may have no established relationship with, and in full view of jail staff. In some cases, the jail staff state that they have to be in the room during labor and delivery.

California prisons are required to allow a support person to be present during labor and delivery<sup>38</sup> and, if they reject a request for a support person, they must provide the pregnant person with a written explanation of why they must give birth alone.<sup>39</sup> Jails are not subject to these requirements but should align their policies to meet this standard.

Unfortunately, most of the jails for which we have reviewed policies or about which we heard stories from postpartum women do not allow any support person. Of the county policies reviewed in our PRA project, only one from Southern California referenced a possible support person in the context of a volunteer doula program. However, it was unclear whether the doulas provided support during labor or other forms of education and support. Birth Justice, a Bay Area organization that works with incarcerated and underserved communities, has worked to establish a support program in San Francisco and Alameda County jails. We know of at least one other county jail in California that is currently considering a similar program. While it is wonderful to see jails starting to recognize the value of having a support person present for labor and delivery, there is a long way to go before people universally get access to this important support in county jails.

## Unmet Health Needs After Giving Birth

### *Lack of Bonding Time and Separation Effects*

“I suffered the most from not being allowed to see my baby... I was in the hospital for four days after my delivery but I only saw my baby on two of those days.” -- Fernanda

Another new mother, Beth spent only two days with her baby before they were separated and she was returned to county jail: “Letting my baby go and returning to [the jail] felt horrible. I worried that being apart would hurt my child’s health and our connection. I did not want him to go on a bottle so early. I am concerned that he might not drink my breastmilk when I get home.”

When taken back to the jail, Beth was put “[i]n the holding cell, [and] I was made to wait for almost four hours. I was given a mat on the floor to lie down. I was exhausted and hungry. I missed my child so much, and I felt like I was losing my mind. [The Deputy] told me I was assigned to a new cell and we would have to walk upstairs. I told [her] that I was dizzy and tired, that I had stitches from the delivery, and that the doctor told me not to do too much like climbing stairs. She insisted that I walk up the stairs to my new cell. This caused a lot of pain in my stitches.”

When Beth got to the new cell, the Deputy searched her belongings and found something objectionable. Despite her condition, two deputies then searched her roughly, causing her pain, and then took her to solitary confinement— “the hole.” “When we reached the hole, the deputies at the hole put me into the holding area. I waited and felt so stressed, like I was losing my mind. A Sergeant came and told me that I was sentenced to 20 days in the hole.” Beth was released from solitary confinement only after a lawyer intervened on her behalf; as a new mother who had just been through the physical, emotional, and hormonal upheaval of childbirth and separation, she spent a total of three days in solitary confinement.

Recovery from childbirth is physically, mentally, and emotionally demanding. According to the American College of Obstetricians and Gynecologists (ACOG), women who return to jail after delivery should have routine medical and mental health evaluations and should receive accommodations to help meet their special needs during the postpartum period.<sup>40</sup> It is especially important that people are screened and treated for postpartum depression.<sup>41</sup> In our PRA project, two counties had policies that were rather specific about the postpartum care required. One county, for example, provided for continuation of prenatal vitamins for 30 days, monitoring mental and physical condition, and specific screening and care for women showing signs of postpartum depression. Another county's policy stated that women would be monitored for increased bleeding, abdominal pain, signs of infections and signs of depression for one week after delivery, with follow up OB/GYN clinic visits at two and four weeks postpartum. Other counties had less specific policies. For example, one county generally provided for monitoring for postpartum depression but otherwise noted that "care" should be available for lactating women and that medical complications "shall" be addressed. One other policy said that "comprehensive" care would be provided, without specification, and one other policy simply said postnatal care would be provided in accordance with the OB/GYN's treatment plan.

On top of physical and mental strains related to simply recovering from pregnancy and delivery, people who give birth while incarcerated in California jails are typically separated from their baby as soon as their recovery is over and they are released from the hospital, which is traditionally two or three days after delivery. This separation is harmful to both the birthing parent and baby.<sup>42</sup> Both ACOG and the American Public Health Association strongly recommend that jails allow mothers time to connect with their infants after delivery, typically by having arrangements for a longer-than-usual postpartum stay in the hospital to allow them to be together. Unfortunately, none of the policies in our PRA project, nor any other California jail policy our team has reviewed, has ever addressed this important component of parent-child bonding and attachment time.<sup>43</sup>

In addition, ACOG strongly recommends that women who give birth while incarcerated be given the option of alternative custody programs or be given access to nursery programs. Alternatives to incarceration include residential home and/or residential drug treatment programs, transitional care facilities that offer appropriate services, home detention/electronic home monitoring, and work-furloughs.<sup>44</sup> Nursery programs are programs within a jail or prison where mother and baby are permitted to live together for a period of time. Studies of participants in nursery programs show that mothers have lower rates of recidivism, and their children show no adverse effects as a result of participation.<sup>45</sup> Additionally, by keeping mothers and infants together, prison nursery programs have been shown to prevent foster care placement and allow for the formation of maternal-child bonds during critical periods of infant development.<sup>46</sup>

Despite the clear benefits of reducing parent and child separation, in California people who give birth while in jail typically are not released to alternative programs or given access to nursery programs. No county policies we have seen have allowed extended stays with babies at the hospital after birth or in a nursery program for bonding and attachment purposes. Only one county in our PRA project had an alternative-to-incarceration program that might be available for new mothers, and none had a nursery program.

Visitation and having access to children in a way that allows parents to maintain custody of their children is also sometimes a challenge. The American Public Health Association recommends that mothers be able to visit with their children while in jail and that jails work with community-based

organizations to provide women with regular access to their children.<sup>47</sup> It also recommends that jails connect women who are guardians of minors with social services to assure their children’s welfare and protection, and that jails provide counseling and assistance to women whose legal custody of dependent children is challenged or withdrawn during incarceration.<sup>48</sup>

### ***Lack of Lactation Accommodations and Support***

Graciela was sentenced to more than 50 days in a county jail for failing to complete community service. She had exclusively breastfed her three month-old daughter up until that time, and upon their abrupt separation, both mother and baby were in serious distress. Graciela was both in extreme pain and also at risk for mastitis and losing her milk supply; her infant faced a dwindling supply of frozen breast milk, and was diagnosed with bronchitis, which her pediatrician attributed to the sudden cessation of breastfeeding.

Both Graciela and her husband had made numerous requests for lactation accommodation at the jail, to no avail. They were told that it was too hard for the Sheriff’s Department to accommodate her lactation needs, either by pumping or allowing her to breastfeed her infant. After five days in jail, with the help of the ACLU, the County agreed to address the situation by sending her home to finish the remainder of her sentence on house arrest.

Another woman, Beth, gave birth while incarcerated. Upon return from the hospital to the jail and separation from her infant, she needed to pump her milk to alleviate pain. “My breasts were becoming painful and swollen because they were filled with milk. [The next day], a nurse came and she brought me a breast pump kit with an un-assembled pump and written instructions. I had never used a breast pump before. The written instructions were hard for me to understand. That same day, I kept calling for the nurse. Some hours later, she came back and gave me a fully assembled pump, which she explained how to use.”

Breastfeeding or providing breast milk to infants is unambiguously beneficial to both nursing parent and child and is strongly recommended by every leading health organization. Even if a person who has given birth does not want to or is unable to breastfeed their child, expressing milk (manually or with a pump) can be medically necessary to relieve pain and prevent mastitis, a serious infection of the breast tissue. People who are not able to breastfeed their infant directly must also pump milk regularly in order to maintain their milk supply. Without pumping, a lactating parent will often endure painful engorgement of the breasts and the milk supply will dry up completely. The refusal to give nursing people lactation accommodations is both a denial of medically necessary health care and sex discrimination, because lactation is a pregnancy-related condition.<sup>49</sup> ACOG strongly recommends that jails maintain a lactation policy for incarcerated women desiring to breastfeed.<sup>50</sup> More specifically, ACOG recommends that jails allow mothers to either breastfeed their infants or express milk for delivery to the infant, with necessary accommodations from freezing, storing, and transporting the milk.<sup>51</sup>

Despite the clear health benefits and legal framework that protects lactation rights, most incarcerated lactating parents are unable to regularly pump milk, let alone provide it to their children. Some lactating parents can’t pump at all—even to relieve severe pain caused by engorgement—

either because they are not allowed or because there is no equipment available. Some jails allow lactating parents to pump for a few weeks to relieve engorgement but not for an extended time or to maintain supply. One county's policies we examined exemplifies both problems. This county allows postpartum women with less than two weeks on their sentence to pump milk in order to maintain lactation but women with more than two weeks left on their sentence are not allowed to pump and would only be taught how to "suppress lactation" and be given a tight bra to minimize discomfort from engorged breasts. Other counties' policies were so vague that it was not clear under what circumstances women could pump; one stated that care for lactating women "shall" be addressed and another said that a breast pump would be issued upon request but without any indication that women are told that pumps are available.

Most jails that do allow pumping just dump milk and won't allow transport to the infant. But this is slowly changing. A few counties are now storing breast milk that is expressed and allowing people to come and pick it up for the incarcerated woman's child. For example, one county in our PRA project has a policy stating: "Provisions will be made to allow lactating inmates to continue feeding their newborn by issuance of a breast pump, appropriate storage of breast milk and making arrangements for collection of the same from the jail by family or designated individual." In another county, lactating women can pump and then store breast milk so that a family member or the baby's guardian can come to the jail to collect it. One large county in Southern California is currently designing a pilot program to test the storage and pick-up of breast milk.

## Ignoring Menstruation-Related Hygiene Needs

"Pads are not dispensed as they are supposed to be. We are forced to reuse them, we are forced to beg for what we need, and if an officer is in a bad mood they are allowed to take what we have and say we are hoarding." – Halle

Halle, incarcerated in a California county jail, said conditions were even worse for women in her jail who were in solitary confinement. These women are not given sanitary products at all and are forced to bleed on the floor that already has urine and feces on it.

Jails must provide women with the personal hygiene supplies they need to manage their menstrual cycle.<sup>52</sup> Yet reports from incarcerated women both in California and nationally show that jails often fail to meet this obligation. Indeed, in 2014 the ACLU of Michigan sued the Muskegon County Jail on behalf of eight incarcerated women, contending that its inhumane and degrading policies—including denial of menstrual hygiene products—violated their constitutional rights.

All of the jail policies we reviewed specifically state that women should have access to menstruation supplies and most state access should be on an "as needed" basis. But women have reported to us that they have experienced delays in accessing the supplies they need either because they are not immediately available, are available only on certain days or in set amounts that are insufficient, are selectively doled out by trustees, or are hoarded by other women because they are in short supply. One county's policy we reviewed states that staff "shall not require proof" that women need the supplies but also states that hoarders will be punished. It is unclear what "hoarding" means in a

context where people may only be given a very limited supply and staff may not respond quickly to requests. It is not uncommon for people to bleed through their pads. A 2014 article from a woman formerly incarcerated in New York described blood-soaked pads falling out of women's pants, women being forced to continue wearing soiled uniforms, and guards withholding supplies as a way to humiliate women, similar to accounts we have heard from California women. According to one woman incarcerated in Washington state: "Most people in here describe having your period in prison as one of the worst things about being locked up. It creates stress and uncertainty due to the conditions that we have to deal with."<sup>53</sup>

## Barriers to Contraception Access

Jails must allow women to continue taking any prescribed birth control methods, so that those methods are not interrupted during incarceration.<sup>54</sup> Most policies we reviewed include language to this effect. Indeed, four of the five counties in our PRA sample had specific contraception continuation policies, whereas one county did not but had a general policy on continuation of prescription drugs and an intake screening process that required questions about whether the woman was taking any birth control medications.

California also requires jails to educate women about contraception and the availability of family planning services.<sup>55</sup> Two of the five counties in our in PRA sample had policies that clearly complied with this requirement. One county simply did not address the issue. Another county said contraception counseling would be provided, but only if an incarcerated woman requested the information, thereby putting the onus on the incarcerated person not the jail. The final county addressed family planning education but only in its pregnancy policy, making it unclear whether only pregnant people get the counseling or all women do.

Jails must offer women contraceptive services within two months of release, according to the California Penal Code.<sup>56</sup> At the time of release, if a woman requests family planning services, she is entitled to get those services.<sup>57</sup> ACOG recommends that women should be allowed to initiate a new form of birth control at any point during their incarceration.<sup>58</sup> Only two of the counties in our PRA sample clearly addressed the requirement of offering and providing contraceptives prior to release or initiating new birth control methods earlier than two months prior to release.

While, on paper, jails may be addressing their obligations with respect to contraception generally, their policies are insufficiently clear regarding a person's need for emergency contraception or providing emergency contraception in a timely manner. It is recommended that jails provide people with emergency contraception if they have had unprotected sex within the last five days and want to avoid pregnancy.<sup>59</sup> As discussed further below, jails must also provide people with access to emergency contraception after incidents of sexual assault.<sup>60</sup>

Every jail policy we reviewed did mention access to emergency contraception in instances of sexual assault. However, even in those instances, it was not clear whether the medication was available at the facility or only at a local hospital if a person went there after an assault. Only one county's policy we have seen aligns with the best practice of providing people access to emergency contraception whenever they may need it, explicitly stating that during the intake screening at receiving triage, "[w]omen will be asked if they have had unprotected sex in the 5 days prior to being arrested. If they

answer yes, they will be offered emergency contraception or referred to the Ob/Gyn NP within 24 hours to discuss emergency contraception.” All of the other policies we reviewed do not address the need to screen people at intake to ascertain whether they had recently had unprotected sex and thus may be in need of or want access to emergency contraception.

## Coercive Sterilization

“I was like, ‘Oh my God, that’s not right... Do they think they’re animals, and they don’t want them to breed anymore?’”

- Crystal Nguyen, a woman formerly incarcerated at Valley State Prison who worked in the prison’s infirmary and overheard medical staff ask incarcerated pregnant women to agree to be sterilized.<sup>61</sup>

“As soon as [the prison doctor] found out that I had five kids, he suggested that I look into getting [a tubal ligation] done. The closer I got to my due date, the more he talked about it... He made me feel like a bad mother if I didn’t do it... Today, I wish I would have never had it done.”<sup>62</sup>

- Woman formerly incarcerated in a California state prison

California has an ugly history of eugenics—the forced sterilization of incarcerated people, people of color, people with disabilities, and others deemed “unfit” to be parents, in order to stop their ability to reproduce. Between 1909 and 1964, California sterilized about 20,000 people under compulsory sterilization laws.<sup>63</sup>

In 2013, California learned that coercive sterilization of incarcerated women had continued to the present day. The Center for Investigative Reporting (CIR), as a result of its own work and the work of Justice Now, revealed that nearly 150 women in California state prisons had been sterilized without the required approvals, and some reportedly without consent, between 2006 and 2010.<sup>64</sup>

The next year, the California legislature responded to this serious abuse of power. In 2014, California passed a law that clearly prohibits sterilization of any incarcerated person for purposes of birth control, with exceptions only for medically necessary procedures.<sup>65</sup> Before that, coercive sterilization or sterilization that occurred without fully informed consent was barred by statute and the state and federal constitutions. In addition, state regulations specifically included sterilization in a list of “medically unnecessary” surgeries that were not authorized for people in state prison.<sup>66</sup> However, as shown by the CIR report, sterilizations were nevertheless occurring, and the regulation did not cover county jails as well as prison. The new law clarified the existing prohibition by placing it in California’s penal code and applying it to both prisons and jails.



One county's policy that we reviewed, which pre-dated the 2014 law, allowed postpartum sterilization "when an inmate requests the procedure," as long as the person received counseling and signed a consent form 180 days to 30 days prior to delivery, the same rules that apply to people seeking use of Medi-Cal funds to obtain a sterilization.<sup>67</sup> After the passage of the new law, we notified the county that it needed to modify its policy to state unequivocally that sterilization for the purpose of birth control was not permitted, and the county agreed to make this change. Only one other county's policy we reviewed addressed sterilization. Under that policy, sterilization was generally prohibited; instead a person who wanted a sterilization procedure would be referred to a provider upon their release. All other county policies we have seen are silent on the subject. Counties should now be incorporating policy language that directly addresses the sterilization ban.

## **Insufficient Protection from Sexual Assault**

Far too many people continue to experience sexual assault in jails. According to the Department of Justice's Bureau of Justice Statistics, 3.2 percent of people incarcerated in jails reported experiencing one or more incidents of sexual victimization by another incarcerated person or facility staff in the prior 12 months.<sup>68</sup> Transgender women, who are most often placed in male, not female, jail facilities, face a disproportionately high rate of sexual assault and harassment: Last year, an estimated 34 percent of transgender people held in local jails reported experiencing one or more incidents of sexual victimization; 23 percent of these incidents were perpetrated by jail staff.<sup>69</sup> It is worth noting that, last year, contrary to popular stereotypes, women "committed more than half of all substantiated incidents of staff sexual misconduct and a quarter of all incidents of staff sexual harassment."<sup>70</sup>

In May 2012, the Department of Justice issued historic standards jails must meet to protect people incarcerated in their custody from sexual violence and harassment. The standards implement the 2003 Prison Rape Elimination Act (PREA). The Act charged the Department of Justice (DOJ) with gathering data on the incidence of jail and prison rape, and created the National Prison Rape Elimination Commission (NPREC) to study the problem and recommend national standards to DOJ.<sup>71</sup> The PREA standards are a product of nine years of study and commentary by experts. California has also adopted the Sexual Assault in Detention Elimination Act (SADEA), which predated the more recently issued and more comprehensive PREA standards.

First and foremost, PREA requires jails to prevent sexual assault from occurring in the first place and requires that staff report and intervene whenever they learn of people being targeted or victimized.<sup>72</sup> Jails must adopt new screening, classification, and housing procedures that screen people's risk level for sexual assault and make efforts to place them in the way that makes them safe.<sup>73</sup> Jails also have to minimize opportunities for sexual assault by having sufficient staffing, rounds, and video monitoring, and by getting rid of physical spaces that might invite attacks.<sup>74</sup> Male staff cannot view or monitor women in areas where they are naked or in the restroom and cannot conduct invasive searches unless there is a real emergency.<sup>75</sup>

Second, when sexual assaults do occur, jails must provide people with appropriate medical and mental health services, confidentially, and at no cost, in a manner consistent with the level of care in the community.<sup>76</sup> This means people must get urgent trauma care, which includes treatment of injuries, STI testing, post-exposure prophylaxis, and, for those who need it, emergency

contraception and pregnancy testing.<sup>77</sup> Prompt forensic exams must also be provided to incarcerated people who want them, in order to preserve evidence for a possible prosecution.<sup>78</sup> Jails have to provide people with access to outside victim advocates and rape crisis organizations and, upon release, must connect them to relevant mental health and social services.<sup>79</sup>

Third, there must be real investigation, accountability, and reporting of sexual assault incidents. Jails cannot turn a blind eye to sexual assault allegations. There must be clear mechanisms to report sexual assault and those who report must be protected from retaliation.<sup>80</sup> Real investigations must happen, with uniform protocols, and evidence preserved.<sup>81</sup> Jail staff who harm people in their custody must face serious consequences.<sup>82</sup>

Finally, the PREA standards also contain a number of specific protections for lesbian, gay, bisexual, transgender, and intersex (LGBTI) incarcerated people. This is because the Department of Justice found that LGBTI incarcerated people had a heightened vulnerability to sexual victimization as well as other problems resulting from prolonged placement in more isolated protective custody.<sup>83</sup> For example, the PREA regulations prohibit prisons and jails from automatically placing incarcerated people in protective custody based solely on their sexual orientation or gender identity. Prisoners cannot be placed in segregated housing against their will unless there has been an individualized assessment of all available alternatives and there are no available alternatives.<sup>84</sup> This individualized assessment requirement is very important, particularly to transgender people. Given that corrections agencies in the United States almost universally assign people to male or female facilities based solely on genital characteristics or birth-assigned sex, this standard marks an important and significant departure from current practice. Furthermore, when people are placed in segregated protective units, jails have to ensure they are given access to programs, privileges, education, and work opportunities to the greatest extent possible.<sup>85</sup> Finally, the PREA standards address search practices that affect transgender women. Jails are never allowed to conduct searches for the purpose of determining a person's genital status.<sup>86</sup> Moreover, the standards restricting cross-gender searches and viewings protect transgender women as well.

At the time we received responses to our Public Record Act requests, not all of our PRA counties had PREA-compliant sexual assault policies; two had largely compliant policies, two had sexual assault policies but they were minimal and did not reflect the extensive PREA standards. One county merely sent us sections of the standards themselves and no actual policy. It may well be jails have brought their policies and practices into compliance since our initial request for information. But despite detailed audited and public reporting procedures about PREA compliance, there is currently still very little publicly available information about how many prisons and jails have done the work to meet the PREA standards. Most of the policies we saw did not address the myriad issues regarding prevention, risk screening, investigation, accountability, and reporting protections that the PREA standards require. Nor did they address the strict limits on cross-gender searching and viewing or the LGBTQI-protective elements of the PREA standards.

The policies we reviewed also generally failed to sufficiently address the medical and mental health care victims must receive. In particular, not all policies provided to us in our PRA sample referenced access to emergency contraception or post-exposure prophylaxis. Some policies assume this will happen at the hospital or with an outside provider but not on-site. Only one county in our PRA sample discussed linking survivors of sexual assault with outside victim advocates and rape crisis organizations.

Policies aside, information we have received from incarcerated and formerly incarcerated people indicates that many county jails have a long way to go to implement the important provisions in PREA specific to LGBTQI people. We continue to receive complaints from numerous transgender women who are still automatically placed in solitary confinement or segregated housing based solely upon their gender identity and who have not received individualized determinations about what housing placements would be most safe. The vast majority of transgender women are still automatically placed in male housing locations despite the serious safety risks, violence, and increased isolation they encounter there. LGBTQ people placed in protective custody units still far too often cannot access rehabilitative services, education, work opportunities, and often remain locked up most of the day. Indeed, the ACLU of Southern California recently sued the San Bernardino County jail for its unequal treatment of gay, bisexual, and transgender people housed in the so-called “alternative lifestyle tank” at the West Valley Detention Center. Whereas individuals held in the jail’s general population area have access to myriad work and rehabilitative programs that allow incarcerated people to earn time credits and reduce their sentences, people in the “alternative lifestyle tank” are denied access to those same programs.

## **Inadequate Data Collection and Oversight of Medical Contractors**

In our PRA project, we requested basic data about each jail’s female population and also data about specific reproductive health needs traditionally associated with women and the frequency with which that care was provided. All of the jail systems we surveyed were able to supply data about the number of women in custody but many could not provide basic data about reproductive health care.

For example, disturbingly only three of the five counties we surveyed were tracking the number of people who had experienced sexual assault in custody. Nearly all of the counties we surveyed (four out of five) tracked the number of pregnant people in custody but most could only provide that data for the most recent year and not the previous four years we requested. Only three of five counties partially tracked pregnancy outcomes (abortions and live birth). Two counties did not track outcomes at all. No counties tracked miscarriages or stillbirths. Only three of the five counties tracked whether women received pelvic exams and pap smears. Only one of the five counties tracked anything about women who experienced gynecological bleeding, ovarian cysts, or fibroids.

The counties appeared to do a better job tracking contraception use and people receiving treatment for sexually transmitted infections. Four out of five counties did track women receiving contraception. Only two of the five counties, however, tracked how many women had received emergency contraception. All five counties tracked number of people receiving treatment for HIV and four out of five tracked number of people with other sexually transmitted infections.

But even when the jails could provide data about specific reproductive health care traditionally associated with women, many could provide it only for the past year and not for the four-year period requested, suggesting there is no longer term, systemic tracking of reproductive health care going on.

When jails reported they could not provide the data we requested, it was either because they did not track the data or because the information was in the hands of outside health care providers contracted to provide care. Some of the county jail systems we have interacted with do not appear

to have any, let alone effective, processes for tracking what happens to people in their custody when they get necessary care from outside providers, despite that the jails are ultimately responsible for health care regardless of who provides the care. Some jails also struggled to provide us with health care policies because it was the outside provider's policy that governed care and the jails did not have easy access to those policies, suggesting a lack of effective oversight of that care.

### **Los Angeles County Policy Changes for Reproductive Health: A Case Study**

In early 2014, the ACLU of California received complaints that women incarcerated in Los Angeles County's main jail for women faced barriers accessing abortion—including having to prove they could pay for the procedure before they could get it. We launched an investigation, speaking with pregnant women in the facility and circulating know-your-rights materials about reproductive health care when people wrote to us with complaints. We learned that not only were women encountering obstacles when they wanted to terminate their pregnancies, women who wanted to continue their pregnancies to birth were encountering systemic problems as well. Pregnant women reported to us inadequate and infrequent prenatal care, illegal shackling, insufficient and unhealthy diet, and lack of access to the comfort accommodations they needed while incarcerated.

After months of gathering stories from many women, we sent the L.A. County Sheriff's Department, including the newly elected Sheriff, an advocacy letter outlining our concerns, our requests for changes in policy and practice, and the legal arguments underlying our requests. We also requested that they disclose to us their policies concerning pregnant women. We then spent nine months in dialogue with the Sheriff's Department. The department provided us with policies and we replied with comments and recommendations for amending the policies, based on the law and medical best practice. We also provided the department with good examples of policies that other California counties and the California Department of Corrections and Rehabilitation have implemented in support of women's reproductive and sexual health. We met regularly with members of the department and the leaders of the women's facility. The leaders of the facility also started meeting regularly with pregnant people incarcerated there to hear their concerns directly.

As a result of our advocacy and collaboration, the L.A. County Sheriff's Department made a number of significant and positive changes. The changes include: (1) creation of a special unit specifically for pregnant and postpartum women, with the intention to track these women and concentrate the services they need; (2) a "special advocate" assigned to the unit to ensure they receive the proper accommodations; and (3) significantly improved and legally compliant policies on abortion access, unbiased pregnancy options counseling, restraints/shackling of pregnant people, prenatal and postpartum care, prenatal diet, pregnancy testing, labor and delivery, and lactation accommodations, per our recommendations. The department has also launched a pilot program to allow family members to pick up pumped milk for delivery to the child in need of milk, and it is exploring a potential doula program.

## Recommendations

1. **Expand access to alternatives to incarceration.** The majority of incarcerated women are behind bars for low-level drug and property offenses. Locking them up hurts their families and communities, as documented in the report *Who Pays? The True Cost of Incarceration on Families* from the Ella Baker Center for Human Rights and Forward Together. California needs to radically expand access to alternatives to incarceration programs for all people. Access to these alternatives is particularly important for people with serious health care needs, such as pregnant people; people with serious caregiving obligations, such as new parents; and people who face extremely high risk of violence and sexual assault in incarceration settings, such as transgender women.
2. **Evaluate and adopt new reproductive health care and sexual assault policies using the ACLU's *Reproductive Health Care in California Jails: A Tool to Assess and Reform Policies and Practices*.** Too many jails do not have explicit policies about reproductive health care and sexual assault. Even where policies exist, they too often fail to fully comply with the law or reflect medical best practice. Having clear policies sets a clear expectation for jail and medical staff, enables incarcerated people and their families to understand their rights, and facilitates accountability. Along with this report, the ACLU of California has developed a tool entitled *Reproductive Health Care in California Jails: A Tool to Assess and Reform Policies and Practices*, available at [www.aclunc.org/ReproductiveHealthCAjails\\_Toolkit](http://www.aclunc.org/ReproductiveHealthCAjails_Toolkit). The tool, meant for jail administrators as well as advocates working on behalf of incarcerated people in California county jails, highlights areas of health care essential to those with reproductive health care needs traditionally associated with women, as well as sexual assault care and prevention, and then provides model policy and practice language to help jails comply with their legal obligations and meet medical standards of care.
3. **Make reproductive health care and sexual assault policies inclusive of transgender people.** Jail reproductive health care policies are often written in gendered terms or apply only to women in women's facilities. As a result, jails too often fail to take into account that transgender men and women, who may not be classified as women or housed in women's facilities, may need reproductive health care traditionally associated with women too. This can lead to dangerous denials of care. It is vitally important that jails provide reproductive health care traditionally associated with women to anyone who needs it, no matter their gender identity or their gendered housing placement. To the extent possible, jails should adopt policies with gender-neutral language and explicitly state in policies that a person must be provided with the reproductive health care and sexual assault care they need, regardless of their gender identity or housing placement.
4. **Effectively implement policies, with training, monitoring and accountability.** The best written policy means nothing if jail and medical staff do not know about the policy, are not trained in the policy, compliance with the policy is not monitored, and there is no accountability for failing to adhere to the policy. Once jails adopt new policies they must devote energy to training, periodic compliance monitoring, and addressing implementation problems. Jails cannot turn a blind eye if policies are ignored and routinely flouted.

5. **Extend existing protections for pregnant people incarcerated in California’s state prisons to pregnant people in county jails.** Currently, protections that address obstetric care, housing accommodations, and the presence of a support person during labor and delivery, among other issues, are confined to a section of the California Code of Regulations that applies to prisons but not jails. An alignment of policies would ensure pregnant people throughout California’s criminal justice system are treated equitably.
6. **Better protect incarcerated people’s access to lactation accommodations, in keeping with state and federal law and medical best practice.** Breastfeeding promotes the mental and physical health of, and bonding between, lactating parents and babies. Because incarceration presents physical and practical barriers to breastfeeding, it is crucial that jails provide lactation accommodations to people who have been nursing their children prior to incarceration, want to give their children the benefits of breast milk during their incarceration, and want to make sure they still have a milk supply after they are released. Accommodations include regular access to a breast pump, ability to briefly store the breast milk safely, and allowing pick-up of the breast milk for delivery to the infant.
7. **Improve record-keeping to ensure that all jail facilities track data relating to reproductive health, including data collected and held by outside agencies that contract with jails to provide health care.** State law currently requires jails to track individual health records, but not to collect, track, or analyze health data about the population as a whole. Collecting broader data of health outcomes would help jail systems identify systemic problems and target public health interventions.
8. **Ensure incarcerated people are made aware of their health rights** while behind bars and are informed of the health care and programs that are available to them.

## Endnotes

- <sup>1</sup> *Bias Behind Bars*, The Women’s Foundation of California 1 (2014), [hereinafter “Bias Behind Bars”] <http://www.womensfoundca.org/sites/default/files/Bias-Behind-Bars.pdf>.
- <sup>2</sup> *Jail Profile Survey, First Quarter Calendar Year 2015 Survey Results*, Board of State and Community Corrections, (2015), [http://www.bscc.ca.gov/downloads/2015\\_1st\\_Qtr\\_JPS\\_Full\\_Report.pdf](http://www.bscc.ca.gov/downloads/2015_1st_Qtr_JPS_Full_Report.pdf).
- <sup>3</sup> *Weekly Report of Population as of Midnight March 25, 2015*, Department of Corrections and Rehabilitation, State of California (2015), [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/WeeklyWed/TPOP1A/TPOP1Ad150325.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOP1A/TPOP1Ad150325.pdf).
- <sup>4</sup> *Jail Profile Survey, Fourth Quarter Calendar Year 2010 Survey Results*, Board of State and Community Corrections (2010), [http://www.bscc.ca.gov/downloads/2010\\_4th\\_Qtr\\_JPS\\_full\\_report.pdf](http://www.bscc.ca.gov/downloads/2010_4th_Qtr_JPS_full_report.pdf); *Monthly Report of Population as of Midnight December 31, 2010*, Department of Corrections and Rehabilitation, State of California (2011), [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Monthly/TPOP1A/TPOP1Ad1012.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/TPOP1A/TPOP1Ad1012.pdf).
- <sup>5</sup> *Jail Profile Survey, First Quarter Calendar Year 2015 Survey Results*, *supra* note 2.
- <sup>6</sup> Allen J. Beck, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12*, U.S. Department of Justice Bureau of Justice Statistics 1 (2014) (Table 1: Prevalence of Sexual Victimization Among Transgender Adult Inmates), [http://www.bjs.gov/content/pub/pdf/svpjri1112\\_st.pdf](http://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf).
- <sup>7</sup> Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman & Mara Keisling, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality & National Gay and Lesbian Task Force 163 (2011), [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf).
- <sup>8</sup> *Bias Behind Bars*, *supra* note 1, at 1.
- <sup>9</sup> Laura M. Maruschak, *Medical Problems of Jail Inmates*, Bureau of Justice Statistics 7 (2006), <http://www.bjs.gov/content/pub/pdf/mpji.pdf>.
- <sup>10</sup> Valerie Jenness *et al.*, *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*, University of California Irvine Center for Evidence-Based Corrections 2 (vol. 2, issue 2, 2007), <http://ucicorrections.seweb.uci.edu/files/2013/06/BulletinVol2Issue2.pdf>.
- <sup>11</sup> Margaret Dooley-Sammuli, *et al.*, *Changing Gears: California’s Shift to Smart Justice*, American Civil Liberties Union (2015), [https://www.acluca.org/wp-content/uploads/2015/11/Prop47\\_report\\_final1.pdf](https://www.acluca.org/wp-content/uploads/2015/11/Prop47_report_final1.pdf).
- <sup>12</sup> The American College of Obstetricians and Gynecologists, *Healthcare for Pregnant and Postpartum Incarcerated Women and Adolescent Females*, Committee on Health Care for Underserved Women, Committee Opinion No. 511 [hereinafter “ACOG Committee Opinion No. 511”] (2011), <http://www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co511.pdf>.
- <sup>13</sup> See *Loder v. City of Glendale*, 14 Cal. 4th 846 (1997) (mandatory urinalysis infringes on privacy rights); see also *Norman-Bloodsaw v. Lawrence Berkeley Lab.*, 135 F.3d 1260, 1269, 1271 (9th Cir. 1998) (unjustified government questions about pregnancy violate Cal. Const. art. I, § 1); see also *Board of Medical Quality Assurance v. Gherardini*, 93 Cal. App. 3d 669, 678 (1979) (“A person’s medical profile is an area of privacy infinitely more intimate, more personal in quality and nature than many areas already judicially recognized and protected.”).
- <sup>14</sup> Cal. Code. Regs. tit. 15, § 1214 (“Except for emergency treatment... all examinations, treatments and procedures affected by informed consent standards in the community are likewise observed for inmate care. Any inmate who has not been adjudicated to be incompetent may refuse non-emergency medical and mental health care. Absent informed consent in non-emergency situations, a court order is required before involuntary medical treatment can be administered to an inmate.”); see also *Bd. of Med. Quality Assurance*, 93 Cal. App. 3d at 678 (“A person’s medical profile is an area of privacy infinitely more intimate, more personal in quality and nature than many areas already judicially recognized and protected.”); see also *Loder*, Cal. 4th 846 (mandatory urinalysis infringes on privacy rights).
- <sup>15</sup> Cal. Penal Code § 4023.6.

<sup>16</sup> Cal. Penal Code § 4028; Cal. Penal Code § 4023.6; Cal. Health & Safety Code §§ 123462(b)-(c); *see also Comm. to Defend Reproductive Rights v. Myers*, 29 Cal. 3d 252, 262 (1981) (“[A]ll women in this state – rich and poor alike – possess a fundamental constitutional right to choose whether or not to bear a child.”). Viability is an assessment made by a licensed health professional means “the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus’ sustained survival outside the uterus without the application of extraordinary medical measures.” Cal. Health & Safety Code § 123464(d). (Viability *See also Colautti v. Franklin*, 439 U.S. 379, 388 (1979) (Viability must be determined by a doctor and is not rigidly set at a number of weeks).)

<sup>17</sup> Cal. Penal Code § 4028; Cal. Health & Safety Code §§ 123462(b)-(c).

<sup>18</sup> Nat’l Comm’n on Correctional Health Care, *Standards for Health Services in Jails* (2014) [hereinafter “NCCHC Standards 2014”] (Compliance Indicator J-G-09).

<sup>19</sup> National Commission on Correctional Health Care, <http://www.ncchc.org/about> (last visited Dec. 17, 2015).

<sup>20</sup> Cal. Gov’t Code § 29602; Cal. Penal Code § 4011(a)-(b); Cal. Const. art. 1, § 17; Cal. Penal Code § 4028.

<sup>21</sup> *Roe v. Crawford*, 514 F.3d 789 (8th Cir. 2008) (prison policy prohibiting the transportation of pregnant inmates offsite for elective abortions did not further legitimate penological interests and violated due process); *Monmouth County Corr. Inst. Inmates v. Lanzaro*, 834 F.2d 326, 336-43 (3d Cir. 1987) (jail policy requiring court ordered release for elective abortions and conditioning access to procedure on ability to pay did not further legitimate penological interests and violated due process); *see also Doe v. Arpaio*, 214 Ariz. 237 (Ct. App. 2007) (jail policy requiring a court order to transport an inmate to receive an abortion did not serve a legitimate penological interest and violated due process); *Roe v. Leis*, 2001 U.S. Dist. LEXIS 4348 (S.D. Ohio 2001) (unpublished) (same).

<sup>22</sup> Carolyn Sufrin, *End Practice of Shackling Pregnant Inmates*, S.F. CHRON. (Aug. 26, 2010), <http://www.sfgate.com/opinion/openforum/article/End-practice-of-shackling-pregnant-inmates-3176987.php>.

<sup>23</sup> ACOG Committee Opinion No. 511, *supra* note 12.

<sup>24</sup> Cal. Penal Code § 3407.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Cal. Code Regs. tit. 15, § 3355.2(j).

<sup>29</sup> NCCHC Standards 2014, *supra* note 18 (Compliance Indicator J-G-09); Cal. Penal Code § 3407.

<sup>30</sup> The Stanford Criminal Justice Center, *Use of Tasers by Law Enforcement Agencies: Guidelines and Recommendations*, Prepared for the City of Mountain View Human Relations Commission (2005), <http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/164097/doc/slspublic/tasersv2.pdf>.

<sup>31</sup> Cal. Penal Code §§ 4023.6; 6030(e).

<sup>32</sup> Cal. Code Regs. tit.15, § 3355.2(c).

<sup>33</sup> Cal. Penal Code § 4011.8.

<sup>34</sup> *Estelle v. Gamble*, 429 U.S. 97 (1976).

<sup>35</sup> Mayo Clinic, *Pregnancy nutrition: Foods to avoid during pregnancy*, Healthy Lifestyle (Sept. 04, 2014), <http://www.mayoclinic.org/healthy-lifestyle/pregnancy-week-by-week/in-depth/pregnancy-nutrition/art-20043844>.

<sup>36</sup> Cal. Penal Code § 6030(e).

<sup>37</sup> Cal. Code Regs. tit. 15, § 3355.2(b); ACOG Committee Opinion No. 511, *supra* note 12.

<sup>38</sup> Cal. Code Regs. tit.15, § 3355.2(k).

<sup>39</sup> *Id.*

<sup>40</sup> ACOG Committee Opinion No. 511, *supra* note 12.

<sup>41</sup> NCCHC Standards 2014, *supra* note 18 (Compliance Indicator J-G-09).

<sup>42</sup> ACOG Committee Opinion, No. 511, *supra* note 12.



- <sup>43</sup> ACOG Committee Opinion, No. 511, *supra* note 12; Task Force on Correctional Health Care Standards, *Standards for Health Services in Correctional Institutions*, American Public Health Association 108 (3d ed. 2003) (Health Services for Women).
- <sup>44</sup> Cal. Penal Code § 1170.05.
- <sup>45</sup> ACOG Committee Opinion, No. 511, *supra* note 12.
- <sup>46</sup> Women’s Prison Association, Institute on Women and Criminal Justice, *Mothers, Infants and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives* 5 (2009), [http://www.wpaonline.org/wpaassets/Mothers\\_Infants\\_and\\_Imprisonment\\_2009.pdf](http://www.wpaonline.org/wpaassets/Mothers_Infants_and_Imprisonment_2009.pdf).
- <sup>47</sup> Task Force on Correctional Health Care Standards, *supra* note 43, at 108-109 (Health Services for Women).
- <sup>48</sup> *Id.*
- <sup>49</sup> Cal Civ. Code § 51; Cal. Gov’t Code §§ 12926(f), 12940; *see also* Cal. Gov’t Code § 12945 ; Cal. Code Regs. tit. 2, §§ 7291.2(d), (u).
- <sup>50</sup> ACOG Committee Opinion, No. 511, *supra* note 12.
- <sup>51</sup> ACOG Committee Opinion, No. 511, *supra* note 12.
- <sup>52</sup> Cal. Penal Code § 4023.5.
- <sup>53</sup> *Letter from KteeO: Menstruation and Incarceration*, Committee Against Political Repression (Nov. 23, 2012), <https://nopoliticalrepression.wordpress.com/2012/11/23/letter-from-kteeo-menstruation-and-incarceration/>.
- <sup>54</sup> Cal. Penal Code § 4023.5(a).
- <sup>55</sup> Cal. Penal Code § 4023.5(b).
- <sup>56</sup> Cal. Penal Code § 4023.5(c).
- <sup>57</sup> Cal. Penal Code § 4023.5(c).
- <sup>58</sup> The American College of Obstetricians and Gynecologists, *Reproductive Health Care for Incarcerated Women and Adolescent Females*, Committee on Health Care for Underserved Women, Committee Opinion No. 535 (hereinafter “ACOG Committee Opinion No. 535”) (2012), [www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co535](http://www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co535).
- <sup>59</sup> ACOG Committee Opinion No. 535; NCCHC Standards 2014, *supra* note 18 (Compliance Indicator J-G-08).
- <sup>60</sup> 28 C.F.R. § 115.82(c).
- <sup>61</sup> Corey G. Johnson, *Female inmates sterilized in California prisons without approval*, The Center for Investigative Reporting (Jul 07, 2013), <http://cironline.org/reports/female-inmates-sterilized-california-prisons-without-approval-4917>.
- <sup>62</sup> *Id.*
- <sup>63</sup> *Id.*
- <sup>64</sup> *Id.*
- <sup>65</sup> Cal. Penal Code § 3440.
- <sup>66</sup> Cal. Code Regs. tit. 15, § 3350.
- <sup>67</sup> Cal. Code Regs. tit. 22, § 707-7.1.
- <sup>68</sup> U.S. Department of Justice, *PREA Data Collection Activities, 2013*, Office of Justice Programs, Bureau of Justice Statistics (2013), <http://www.bjs.gov/content/pub/pdf/pdca13.pdf>.
- <sup>69</sup> U.S. Department of Justice, *PREA Data Collection Activities, 2015*, Office of Justice Programs, Bureau of Justice Statistics (2015), <http://www.bjs.gov/content/pub/pdf/pdca15.pdf>.
- <sup>70</sup> *Id.*
- <sup>71</sup> Nat’l Prison Rape Elimination Comm’n., *Nat’l Prison Rape Elimination Comm’n. Report 1* (June 2009), <https://www.ncjrs.gov/pdffiles1/226680.pdf>.
- <sup>72</sup> 28 C.F.R. § 115.61(a).
- <sup>73</sup> This analysis uses the term “victim” in lieu of the term “survivor” to accurately portray the legislation.
- <sup>74</sup> 28 C.F.R. § 115.13(a).
- <sup>75</sup> 28 C.F.R. § 115.15(b) (Goes into effect August 20, 2015 for jails with rated capacity >50, August 20, 2017 for jails with rated capacity ≤50).
- <sup>76</sup> 28 C.F.R. 115.82(a)-(b), (d); 28 C.F.R. 115.83(a)-(c); *see also* NCCHC Standards 2014, *supra* note 18 (Compliance Indicator J-B-05: Response to Sexual Abuse- Compliance Indicators).

<sup>77</sup> 28 C.F.R. § 115.82(c); 28 C.F.R. § 115.83(d)-(f).

<sup>78</sup> Cal. Penal Code § 2639(b); NCCHC Standards 2014, *supra* note 18 at 34 (Compliance Indicator J-B-05: Response to Sexual Abuse- Compliance Indicators); *see also id.* at 149 (Standard J-I-03: Forensic Information) which generally prohibits jails from engaging in forensic evidence collection but explicitly allows it in the context of sexual assault, with the victim’s consent. The general forensic evidence standard compliance indicator also states that all aspects of this standard should be “addressed by written policy and defined procedures.”

<sup>79</sup> 28 C.F.R. § 115.53(a); 28 C.F.R. § 115.53; *see also* ACOG Committee Opinion, No. 535, *supra* note 58.

<sup>80</sup> 28 C.F.R. § 115.51; 28 C.F.R. § 115.67; 28 C.F.R. § 115.82(d); *see also* Cal. Penal Code § 2637(a).

<sup>81</sup> 28 C.F.R. § 115.21(c).

<sup>82</sup> 28 C.F.R. § 115.22(a)-(b).

<sup>83</sup> National Prison Rape Elimination Commission, *supra* note 71 at 73 (June 2009). For more about PREA and protection of LGBTI prisoners, see the ACLU’s toolkit entitled, *Prison Rape Elimination Act (PREA) Toolkit: End the Abuse- Protecting LGBTI Prisoners from Sexual Assault*, <https://www.aclu.org/other/prison-rape-elimination-act-prea-toolkit-end-abuse-protecting-lgbti-prisoners-sexual-assault>.

<sup>84</sup> 28 C.F.R. § 115.43 (a).

<sup>85</sup> 28 C.F.R. § 115.43 (b).

<sup>86</sup> 28 C.F.R. § 115.15 (e).





**ACLU**  
AMERICAN CIVIL LIBERTIES UNION  
of CALIFORNIA

**STRONG  
FAMILIES**