

REPRODUCTIVE HEALTH CARE IN CALIFORNIA JAILS

A TOOL TO ASSESS AND
REFORM POLICIES AND
PRACTICES



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Reproductive Health Care in California Jails: A Tool to Assess and Reform Policies and Practices

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Introduction

This tool is for jail administrators as well as advocates working on behalf of incarcerated women in California county jails. The tool is meant to help assess and improve jail policies and practices with respect to reproductive health care traditionally associated with women and with respect to sexual assault. The tool highlights essential areas of reproductive health care and sexual assault and then provides model policy and practice language to help jails comply with their legal obligations and meet medical standards of care.

The language we provide can be adopted as policy or procedure and is a yardstick by which to measure a jail's current practice. The model policies/practices are based on a number of sources, including 1) state and federal laws and regulations that county jails must follow and 2) laws state prisons must follow, which are instructive to county jails administrators. We also reference 3) standards of care and best practices in the reproductive health care of incarcerated women, provided by professional bodies such as the National Commission on Correctional Health Care, the American Public Health Association, and the American College of Obstetricians and Gynecologists. As a general matter, of course, jails must always be cognizant of their overarching constitutional obligation to provide medically necessary care for the serious medical needs of people in the county's care.

Because jails often have parallel but separate policies, practices and guidelines for medical and custody staff, we recommend administrators examine policies and practices of medical and custody entities, incorporate the following principles, and ensure that custody and medical policies and practices are aligned.

A note for reading this tool: where a model policy/practice statement derives from binding law that a jail must follow, that policy language is in normal font. Where a model policy/practice statement is derived from medical best practice rather than law, that policy language is italicized.

A note on gendered language: this tool often uses the term "woman" or "women." This is because many of the laws and best practice standards in the health areas we cover speak of women and because many jails have or will adopt these policies to apply to people who are housed in women's facilities. We use the term "woman" or "women" here when the law upon which the policy language is based uses that terminology. Where a law upon which the policy language is based is written in a gender-neutral fashion, we use gender-neutral terminology. It is vitally important, however, 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. This includes cisgender women housed in women's facilities; transgender women, whether housed in a women's or men's facility, and transgender men, whether housed in a women's or men's facility, all of whom may need

some form of reproductive health care traditionally associated with women.ⁱ To fail to do so would be prohibited discrimination against transgender people.¹ 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.

PREGNANCY

Pregnancy Testing

- Pregnancy testing will be offered as part of the required receiving health screening for all women of reproductive age.²
- Pregnancy tests will be voluntary and not mandatory. Women will be allowed to refuse pregnancy tests, whether they are offered during an initial health exam or receiving screening, or at another time during their incarceration.³
- Every woman will have the right to summon and receive the services of any physician or surgeon of their choice – including the jail’s physician – in order to determine whether they are pregnant, at any point of incarceration.⁴
- Each jail will post information about pregnancy testing and pregnancy care rights in at least one conspicuous place.⁵

Options Counseling

- People with a positive pregnancy test will receive comprehensive and unbiased options counseling that includes information about prenatal health care, adoption, and abortion. Jail staff will not urge, force, or otherwise influence a pregnant person’s decision.*⁶

Abortion

- Pregnant people who want an abortion will be permitted to determine their eligibility for an abortion under state and federal law, and if determined by a licensed health professional to be eligible, will be permitted to obtain an abortion.⁷
- A pregnant person who wants an abortion will get a determination of the extent of the medical services they need.⁸ The jail will ensure they receive it from the physician or surgeon of their choice.⁹ (A law that passed in 2013 expanded legal authorization to

ⁱ 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.

provide first trimester abortions to certified nurse midwives, physician assistants, and nurse practitioners who have been trained in the procedure.¹⁰⁾

- Any pregnant person is eligible for an abortion prior to fetal viability or when the abortion is necessary to protect the person's life or health. Viability is an assessment made by a licensed health professional.¹¹ No jail may confer authority or discretion to non-medical jail staff to decide if a pregnant person is eligible for abortion.¹²
- Jail staff will not deny or interfere with a pregnant 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 a pregnant person to pre-pay or prove their ability to pay for the procedure.¹³
- Information about pregnant person's rights to access abortion will be posted in at least one conspicuous place to which all women have access.¹⁴

Obstetric/Prenatal Care

- Pregnant women will get a determination of the extent of the medical services they need.¹⁵ The jail will ensure that pregnant women receive these services from the physician or surgeon of her choice.¹⁶ (This physician may be the one available on-site or via a contracted entity. Any expenses occasioned by the services of a physician or surgeon whose services are not provided by the jail will be borne by the woman.¹⁷⁾
- Pregnant people will get regular and timely prenatal care, as well as prompt emergency care. (Cal. Code Regs. tit. 15, § 3355.2 establishes minimum requirements for state prisons that can serve as a model: *An obstetrics examination within seven days of their arrival at a facility or after they are determined to be pregnant;*¹⁸ *a determination from a medical professional of the term of pregnancy and a plan of care, and order diagnostic studies, as needed;*¹⁹ *and regular obstetric visits, unless otherwise indicated by their medical professional.*²⁰ *These visits should be every 4 weeks in the first trimester up to 24-26 weeks gestation, every 3 weeks thereafter up to 30 weeks gestation, every 2 weeks thereafter up to 36 weeks gestation, and weekly after 36 weeks through delivery.*²¹ *High-risk pregnancies will be identified and referred appropriately.*²²).
- Prenatal care will include mental health and counseling services as appropriate.²³
- The jail will provide pregnant women information pertaining to childbirth education and infant care.²⁴

Accommodations and Specialized Treatment for Pregnant People

- Pregnant people will receive a balanced, nutritious diet approved by a doctor²⁵ and necessary vitamins, as approved by a doctor.²⁶

- Pregnant people residing in multi-tier housing will automatically receive a lower bunk and lower-tier housing.*²⁷
- Pregnant people will never be shackled or restrained with leg irons, waist chains, or handcuffs behind the body.²⁸ Pregnant people will be advised about the laws placing restrictions on how pregnant people can be restrained, orally or in writing, upon confirmation of their pregnancy.²⁹ *Jails will avoid using any restraints during pregnancy and the postpartum period as much as possible.*³⁰ *The jail will ensure that if a pregnant woman is restrained while transported to an outside hospital to give birth, it is in the least restrictive way possible.*³¹
- Any restraints used on a pregnant person will be removed during a medical emergency when a medical professional in charge of the person's care determines that such removal is necessary.³²
- Pregnant people will receive mental health and counseling services integrated into pregnancy care, and jails will ensure that all pregnant people are able to easily submit an application for inpatient or outpatient mental health services.*³³
- Jail health professionals will offer and, if desired, provide medication-assisted treatment (e.g. methadone or buprenorphine) to opiate-using pregnant people.*³⁴ *(In some cases this may require inpatient hospitalization to stabilize on an initial dose.) Pregnant people who have used heroin within three days prior to incarceration, either by their own admission or as documented in writing by a parole agent, or are currently receiving medication-assisted treatment, shall be enrolled in a medication-assisted program.*³⁵ *If a pregnant person is already on medication-assisted treatment, jail staff will facilitate their continuing use of the medication.*³⁶ *Jails health professionals will encourage - but may not force - people to remain on medication-assisted treatment for the duration of a pregnancy.*³⁷ *All medication-assisted treatment will include counseling about the risks of withdrawal.*³⁸

Labor and Delivery

- Pregnant people will never be shackled or restrained with leg irons, waist chains, or handcuffs behind the body while in labor or in recovery after delivery.³⁹ Pregnant people will not be restrained by the wrists, ankles, or both, while in labor, during delivery, or in recovery after delivery,⁴⁰ unless it is deemed necessary for the safety of the person who is giving birth or just given birth, the staff, or the public.⁴¹ *Jails will avoid using any restraints during pregnancy and the postpartum period as much as possible.*⁴² *The jail will ensure that if a pregnant person is transported to an outside hospital to give birth or otherwise, it is in the least restrictive way possible, and they will not be chained to another person.*⁴³
- Any restraints used on a pregnant person will be removed during labor, delivery, and recovery from delivery when a medical professional in charge of the woman's care determines that such removal is necessary.⁴⁴
- A pregnant person will be advised about the laws concerning restraints of pregnant and postpartum women, orally or in writing, upon confirmation of the pregnancy.⁴⁵

- A pregnant person in labor should be treated as an emergency, and the person in labor should be transported via ambulance to an outside facility if needed, accompanied by custody staff.⁴⁶*
- Pregnant people in labor and delivery will be given the maximum level of privacy possible during the labor and delivery process. A deputy should be stationed outside the room rather than in the room whenever possible. Where a deputy must be present in the room, the deputy should stand in a place that grants as much privacy as possible during labor and delivery.*
- Pregnant people will be allowed to have a support person (an approved visitor or designated jail staff) present during labor and delivery, if they wish.⁴⁷ If a pregnant person's request for a particular support person is denied, jails will provide the reason for the denial in writing.⁴⁸*

Postpartum Care

- Pregnant people will receive postpartum information and health care, and will be notified, orally or in writing, about postpartum information and health care.⁴⁹
- People recovering from labor and childbirth will receive appropriate medical care and accommodations. This will include:
 - *Assessing a person who delivers a child vaginally to determine appropriate housing, and to begin their postpartum care, and admitting people who deliver via C-section to further on-site care at the jail facility.⁵⁰ The medical professional in charge of a person's care should have discretion to determine when, postpartum, they are cleared for housing in the general population.⁵¹*
 - *A postpartum examination six weeks after a person gives birth, wherein the medical professional in charge of a person's care will determine whether they will be cleared, or if further medical restrictions are warranted.⁵²*
 - *A screening for depression or mental stress during pregnancy and for postpartum depression after delivery, and treatment as needed.⁵³*
 - *A bottom bunk during the postpartum period.⁵⁴*
 - *A recovery period of at least 4-6 weeks after delivery before a person is required to resume normal activity.⁵⁵*
- People will be provided with the birth control method of their choice during the postpartum period.⁵⁶*
- People will be allowed time to connect with their infants after delivery, both in the hospital and at subsequent visitation at the jail.⁵⁷*

Lactation

- Pregnant and postpartum people will be educated about the benefits of breastfeeding and jail staff will encourage and support people who wish to breastfeed.⁵⁸*

- Lactating parents, both during the postpartum period and thereafter if they desire, will be allowed to express milk⁵⁹ for purposes of relieving pain, preventing mastitis, maintaining milk supply, or providing milk to the infant.⁶⁰ *The jail will permit delivery of expressed milk to the infant⁶¹ and will make accommodations for freezing, storing, and transporting the milk.*⁶²

CONTRACEPTION

- Women will be provided information and education about the availability of family planning services.⁶³ *Medical staff will provide nondirective counseling about pregnancy prevention⁶⁴ and about the full spectrum of birth control methods.*
- Women will be able to continue birth control measures prescribed by her health care provider,⁶⁵ *to begin birth control, or to elect a different method of birth control, if desired, at any point of incarceration⁶⁶ or within 60 days prior to her scheduled release.*⁶⁷ *Women will have access to comprehensive contraceptive services, including emergency contraception, based on either medical need or potential risk of pregnancy.*⁶⁸
- Every woman will be offered contraceptive services at least 60 days prior to her scheduled release date.⁶⁹ Upon her request, the jail will provide her those family planning services prior to her release or, alternatively, arrange for her to receive them from the county or a local provider at the time of her release.⁷⁰
- Jails will make emergency contraception available at both intake and on request at any point of incarceration.*⁷¹
- Survivors of sexual violence will receive timely information about and access to emergency contraception as part of required acute-trauma care, whether the violence occurred during incarceration or soon before incarceration.⁷²

STERILIZATION

- Sterilizing people for the purpose of birth control is prohibited.⁷³
- Sterilization of an incarcerated person is permitted only when: (1) The procedure is required for the immediate preservation of the individual's life in an emergency medical situation, or (2) The sterilizing procedure is medically necessary, as determined by contemporary standards of evidence-based medicine, to treat a diagnosed condition, and all of the following requirements are satisfied:
 - (A) Less invasive measures to address the medical need are nonexistent, are refused by the individual, or are first attempted and deemed unsuccessful by the individual, in consultation with his or her medical provider.

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

(C) Patient consent is obtained after the individual is made aware of the full and permanent impact the procedure will have on his or her reproductive capacity, that future medical treatment while under the control of the department or county will not be withheld should the individual refuse consent to the procedure, and the side effects of the procedure.⁷⁴

GENERAL HYGIENE AND BASIC GYNECOLOGICAL CARE

- People will be permitted to use personal hygiene materials, such as sanitary napkins and tampons, to manage their menstruation.⁷⁵ *Jails will provide these materials, as needed.*⁷⁶
- Women will receive a mental and physical examination upon their commitment to the jail.*⁷⁷ *This examination may include a pelvic and a breast examination, a Pap test, and/ or and baseline mammography, if indicated.*⁷⁸ A health care provider will also obtain a complete medical history, covering issues such as sexual activity, breast disease, and gynecologic problems.⁷⁹ The jail will obtain a medical history from each woman upon intake, which includes past pregnancies and pregnancy outcomes.⁸⁰
- The jail will provide a woman care, treatment and training adapted to her particular condition,⁸¹ including gynecological issues (e.g. abnormal uterine bleeding, fibroids, ovarian cysts, vaginal cysts, STDs). *Jails will provide gynecological care for women that is consistent with community standards of care, with special attention to the increased risk of health problems common to incarcerated populations, such as infectious diseases and mental health problems.*⁸²
- Jails will provide clinical breast exams and mammograms, per national guidelines of the US Preventive Services Task Force.*⁸³
- Women 21 and older will receive an annual examination, with pelvic examination when indicated; pelvic examinations of patients younger than 21 should be performed only when indicated by medical history.*⁸⁴
- Jails will provide women cervical cancer screenings, Pap tests, and HPV tests per national guidelines.*⁸⁵
- Jails will screen and treat women for cancers of the reproductive system, as necessary.*⁸⁶

SEXUAL ASSAULT

We provide the following policy language and principles to help jails combat and appropriately respond to sexual assault in incarcerated populations. This section is based largely on the Prison Rape Elimination Act (PREA), 28 C.F.R. § 115 et. seq., federal law that is binding on all jails and prisons in the state of California. For a more complete resource, we recommend consulting the [National PREA Resource Center](#), which houses legal information, research, and training materials, among other practical resources, or contacting the ACLU of Southern California for further detail. Furthermore, the PREA standards have a number of provisions that specifically address obligations with respect to transgender women and lesbian, gay, bisexual, intersex, and gender non-conforming people. Some of these principles are incorporated below, but if you are grappling with an LGBTQ specific issue, please contact the ACLU of Southern California. Here, we provide some of the core concepts that jails should adopt in policy.

Preventing Sexual Assault

- Each jail facility is responsible for preventing sexual abuse and assault,⁸⁷ and must and will intervene when people are targeted or victimized.⁸⁸ Each jail must and will have a system ensuring that staff report knowledge or suspicion of sexual assault immediately.⁸⁹
- Each jail will have screening, classification, and housing placement procedures that identify people at risk of being victims⁹⁰ of sexual assault and those who may assault others. Each jail will periodically re-screen for this risk.⁹¹ Housing and safety determinations will be made on an individualized basis.⁹²
- Jails will have staffing plans, rounds plans, and video monitoring plans and must minimize physical spaces and opportunities for sexual assault perpetrated by inmates.⁹³
- Male correctional staff will not view or monitor women in areas where they are naked or using the restroom⁹⁴ and will not conduct invasive searches (e.g. strip searches, visual body cavity searches, pat downs) of women, unless there is a true emergency.⁹⁵
- No searches will be conducted for the sole purpose of determining a person's genital status.⁹⁶
- People will not be placed in involuntary segregated housing unless (1) an assessment of all available alternatives is made and (2) a determination has been made that no alternative means of separation is available.⁹⁷ This determination must be made within the first 24 hours of involuntary segregation and involuntary segregated housing should generally not exceed 30 days.⁹⁸
- When people are placed in protective custody, they will be given access to programs, privileges, education, and work opportunities to the maximum extent possible.⁹⁹

Medical and Mental Health Services

- Custody and medical staff will look for indications of recent sexual assault at all points during incarceration.¹⁰⁰ Medical evaluations will include assessment and collecting a woman's past history of abuse, assault, and intimate partner violence.
- Victims of sexual assault will be assessed by in-house providers with proper expertise or by community experts.¹⁰¹
- Jails will provide victims with appropriate, timely, and unimpeded access to medical and mental health care to address consequences of sexual assault. This care will be consistent with the community level of care.¹⁰²
- Jails will provide women who are sexually assaulted timely trauma care that includes treatment of injuries, sexually transmitted infection (STI) testing, post-exposure prophylaxis, emergency contraception, and pregnancy testing.¹⁰³ These services and treatment are provided at no cost and confidentially, regardless of whether the woman wants to press charges.¹⁰⁴
- Jails will offer victims prompt forensic exams and evidence collection, but will proceed with such only with a victim's consent.¹⁰⁵
- Jails will provide anyone who alleges sexual assault with access to outside victim advocates and rape crisis organizations.¹⁰⁶ Jails will post or make accessible contact information for such organizations; and enter into agreements with such community providers to provide emotional support services.¹⁰⁷
- Upon release, jails will link people who have experienced sexual assault to relevant social services for their continued wellbeing.¹⁰⁸

Reporting, Investigation, and Accountability

- Each jail will address reports of sexual assault. Women may report sexual assault and harassment in multiple ways (including: verbally, in writing, anonymously, and from third parties). Jails must have at least one way for women to report to an entity that is not part of the agency, and a mechanism(s) for staff to make reports.¹⁰⁹
- The county jail system will have PREA Coordinator who will have sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its jail facilities. Each jail will have a PREA compliance manager.¹¹⁰
- Each jail will protect, and prevent retaliation against, inmates (and staff) who complain about sexual assault.¹¹¹ Each jail must ensure the safety of women who experience sexual assault, and protect their confidentiality, regardless of whether they press charges.¹¹²
- Each jail will investigate every report of sexual assault, preserve evidence, and have uniform evidence protocols.¹¹³

- Jail staff who sexually assault inmates will be held accountable for their actions and will be subject to punishment, including termination. Assault will be reported to law enforcement.¹¹⁴ Sexual activity between inmates and staff is prohibited.¹¹⁵

SEXUALLY TRANSMITTED INFECTIONS (STIs)/ HIV

Testing, Screening, and Treatment

- People will be offered STI testing during intake in accordance with CDC guidelines for STI testing in correctional settings.¹¹⁶ People may also request HIV and STI testing at other times during their incarceration. All testing will be voluntary and people have the right to refuse. Jails will provide treatments consistent with Centers for Disease Control/ U.S. Department for Health and Human Services guidelines for treating individuals with STIs and/ or HIV.¹¹⁷
- The jail will not quarantine or segregate HIV-positive individuals, prevent their equal participation in programs and work assignments (if otherwise eligible), or otherwise treat HIV-positive individuals in a stigmatizing way.¹¹⁸

Education and Prevention

- Jails will provide all people information on the prevention, transmission, symptoms, and treatment available for STIs and HIV.¹¹⁹
- Jails will make barrier devices (female and/ or male condoms) available to individuals to reduce the spread of HIV infection.¹²⁰

MAINTAINING FAMILY AND COMMUNITY CONNECTIONS

Whenever possible, jails will make alternative sentencing to community-based non-institutional settings available to people during their pregnancy, their postpartum period, and the early years of their children's lives.¹²¹ Alternative sentencing programs will be made available to all parents.

Visitation

- The jail will adopt policies that support family reunification and maximum contact. Jails will provide parents with regular access to their children.¹²²
- Jails will provide contact visits, where children and parents are able to see, speak with, and touch each other.¹²³
- Jails will provide counseling and assistance to parents whose legal custody of children is challenged or withdrawn during incarceration.¹²⁴

- Jails will provide classes on parenting and modeling behavior.*¹²⁵

ADMINISTRATIVE

Contracts

- The jail will have a contract with each outside provider or resource(s) that provides health services to women incarcerated in the jail.¹²⁶
- The jail will only contract with outside resources (e.g. other facilities, organizations, individuals, or private agencies) that meet the standards and requirements of all applicable regulations at the time of entering the contract and throughout the contracted time period.¹²⁷ *Jails will only contract with hospitals or other outside facilities that are accredited by JCAHO (the Joint Commission, found at jointcommission.org) and which meet state and local licensure requirements.*¹²⁸
- Each contract will outline the terms of care. Terms will include, but may not be limited to:
 - A description of the services to be provided,
 - The financial arrangements,
 - The methods by which the services are to be provided,
 - The conditions upon which the agreement or contract can be terminated,
 - Signatures of parties to the agreement, and
 - Effective dates for the agreement.¹²⁹
- The jail will maintain a file of all signed and dated copies of contracts, or other written agreements with outside resources.¹³⁰ These documents will be readily available for inspection.¹³¹
- The jail remains responsible and accountable for all services provided through agreements and/or contracts.¹³²
- Jails will arrange the use of local hospitals in advance of needed care, to ensure timely transportation, provision for necessary security measures, appropriate discharge planning, and confidential communication of medical information.*¹³³
- Jails will ensure contract with outside providers as needed to ensure all medical services due are available.*

Data Collection

- The jail will maintain individual records of medical and mental health of those in their custody.¹³⁴
- The jail will create and implement a written plan for annual statistical summaries of health care and pharmaceutical services that are delivered, whether by on-site providers, off-site contract providers, or county hospitals.¹³⁵
- The jail will maintain records of specialty health care services (i.e. prenatal care, preventive care) provided to the inmate population, and epidemiologic information including prevalence data on HIV rates, STI rates, pregnancy rates, and pregnancy outcomes (such as live births, still births, miscarriages, and abortions), disaggregated by age, race and gender.*¹³⁶
- The jail will adopt and implement a continuous quality improvement program that monitors and improves health care delivered in the facility, through data collection and analysis.*¹³⁷
- In contracts with outside providers, the jail will require the provider to track aggregate data of health care and pharmaceutical services that are provided to women, including specialty health care services provided (i.e. prenatal care, preventive care).*
- The jail will collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.¹³⁸ The jail will aggregate this sexual abuse data at least once a year.¹³⁹

If you need further assistance assessing or crafting legally compliant and medically sound policies and practices for incarcerated women, please contact:



•ACLU of Northern California • 39 Drumm Street, San Francisco CA 94111 • www.aclunc.org • 415.621.2488•

•ACLU of Southern California • 1313 West Eighth St., Los Angeles, CA 90017 • www.aclusocal.org •
•213.977.5253•

•ACLU of San Diego & Imperial Counties • PO Box 87131, San Diego, CA 92138-7131 •
•www.aclusandiego.org • 619.232.2121•

Endnotes

¹ California law clearly prohibits discrimination against transgender people, which includes failing to provide them with medical care they need because, in the case of transgender women held in men's facilities, they are not recognized as the gender they are (women) or, in the case of transgender women, they identify as men and the relevant laws and standards speak in terms of women. Our laws prohibit jails from engaging in gender or gender identity discrimination. *See, e.g.*, Cal. Const. art. I, § 7 (California Constitution's Equal Protection Clause); Cal. Gov't Code § 11135(a) (prohibiting discrimination on the basis of gender identity or gender in government programs or activities). California law defines gender to include one's gender identity. *See, e.g.*, Cal. Penal Code § 422.56(c). Federal law similarly protects transgender people's rights to access the care they need without discrimination. *See, e.g.*, U.S. Const. amend. XIV (Equal Protection Clause); U.S. Const. amend. V, VIII (requiring jails to provide people with medically necessary care); Patient Protection and Affordable Care Act (ACA), Pub. L. No. 111-148, § 1557, 124 Stat. 119 (2010) (to be codified in scattered sections of 42 U.S.C.) § (prohibiting discrimination against transgender people by health programs or facilities receiving federal funds).

² Cal. Code Regs. tit. 15, § 1207.

³ *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 Bd. of Med. 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.").

⁴ Cal. Penal Code § 4023.6.

⁵ *Id.*

⁶ Nat'l Comm'n on Correctional Health Care, *Standards for Health Services in Jails* 128 (2014) [hereinafter *NCCHC Standards 2014*] (J-G-09: Counseling and Care of the Pregnant Inmate). ("Pregnant women are given comprehensive counseling and assistance in accordance with their expressed desires regarding their pregnancy, whether they elect to keep the child, use adoption services, or have an abortion."). Note that while we place this model policy in italics as representing medical best practice, if a jail provided *biased* counseling that rises to the level of creating a barrier or interference with a woman's decision whether to terminate her pregnancy, then such actions could violate a woman's right to decide whether to bear a child protected by the federal and state Constitutions as well as the California Reproductive Privacy Act.

⁷ Cal. Penal Code § 4028; Cal. Penal Code § 4023.6; Cal. Health & Safety Code §§ 123462(b)-(c).

⁸ Cal. Penal Code § 4023.6.

⁹ Cal. Penal Code § 4023.6.

¹⁰ Cal. Bus. & Prof. Code §§ 2253, 2725.4 & 3502.4; Cal. Health & Safety Code § 123468.

¹¹ Cal. Health & Safety Code § 123464(d). (Viability 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."); *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.). Viability is typically understood to occur after 24 weeks of pregnancy.

¹² Task Force on Correctional Health Care Standards, *Standards for Health Services in Correctional Institutions*, American Public Health Association 2 (3d ed. 2003) (Access to Care). ("Procedures must be developed that minimize staff discretion and minimize the ability of medical paraprofessionals or correctional officers to interfere with access to appropriate levels of care.").

¹³ Cal. Penal Code § 4028; Cal. Health & Safety Code §§ 123462(b)-(c).

¹⁴ Cal. Penal Code §§ 4023.6, 4028.

¹⁵ Cal. Penal Code § 4023.6.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Cal. Code Regs. tit. 15, § 3355.2(b).

¹⁹ *Id.*

²⁰ Cal. Code Regs. tit. 15, § 3355.2(c).

²¹ Cal. Code Regs. tit. 15, § 3355.2(b).

²² Task Force on Correctional Health Care Standards, *supra* note 12 at 107.

²³ Cal. Penal Code § 4011.8.

²⁴ Cal. Penal Code § 6030(e).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Cal. Code Regs. tit. 15, § 3355.2(d); 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 (2011), [hereinafter *ACOG Committee Opinion No. 511*] <http://www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co511.pdf> (“Pregnant women are at high risk of falls. Activities with a high risk of falling should be avoided Specifically, incarcerated women should be given a bottom bunk during pregnancy and the postpartum period.”).

²⁸ Cal. Penal Code § 3407.

²⁹ *Id.*

³⁰ NCCHC Standards 2014, *supra* note 6 at 128 (J-G-09: Counseling and Care of the Pregnant Inmate).

³¹ Cal. Code Regs. tit. 15, § 3355.2(j); NCCHC Standards 2014, *supra* note 6 at 128 (J-G-09: Counseling and Care of the Pregnant Inmate).

³² Cal. Penal Code § 3407.

³³ Cal. Penal Code § 4011.8.

³⁴ Cal. Code Regs. tit. 15, § 3355.2(e); ACOG Committee Opinion No. 511, *supra* note 27.

³⁵ Cal. Code Regs. tit. 15, § 3355.2(e).

³⁶ Task Force on Correctional Health Care Standards, *supra* note 12 at 84 (Drug and Alcohol Detoxification and Treatment).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Cal. Penal Code § 3407.

⁴⁰ NCCHC Standards 2014, *supra* note 6 at 128 (J-G-09: Counseling and Care of the Pregnant Inmate).

⁴¹ Cal. Penal Code § 3407.

⁴² NCCHC Standards 2014, *supra* note 6 at 128 (J-G-09: Counseling and Care of the Pregnant Inmate).

⁴³ Cal. Code Regs. tit. 15, § 3355.2(j); NCCHC Standards 2014, *supra* note 6 at 128 (J-G-09: Counseling and Care of the Pregnant Inmate).

⁴⁴ Cal. Penal Code § 3407.

⁴⁵ *Id.*

⁴⁶ Cal. Code Regs. tit. 15, § 3355.2(j).

⁴⁷ Cal. Code Regs. tit. 15, § 3355.2(k).

⁴⁸ *Id.*

⁴⁹ Cal. Penal Code § 6030(e).

⁵⁰ Cal. Code Regs. tit. 15, § 3355.2(l).

⁵¹ Cal. Code Regs. tit. 15, § 3355.2(l)2(a).

⁵² Cal. Code Regs. tit.15, § 3355.2(l)3.

⁵³ ACOG Committee Opinion No. 511, *supra* note 27; NCCHC Standards 2014, *supra* note 6 at 128 (J-G-09: Counseling and Care of the Pregnant Inmate). (“Postpartum depression may manifest itself in different ways, particularly. When the woman is separated from her newborn immediately after birth. Medical staff, therefore, should work with mental health staff to address the issue and provide appropriate treatment.”).

⁵⁴ *Id.*

⁵⁵ *Id.* Jails should take this 4-6 week recovery period into consideration when assigning work to incarcerated women during the postpartum period.

⁵⁶ ACOG Committee Opinion No. 511, *supra* note 27.

⁵⁷ ACOG Committee Opinion No. 511, *supra* note 27; Task Force on Correctional Health Care Standards, *supra* note at 108 (Health Services for Women).

⁵⁸ ACOG Committee Opinion No. 511, *supra* note 27.

⁵⁹ California law states that “[n]o person in the State of California shall, on the basis of [...] sex [...] be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that [...] is conducted, operated, or administered by the state or by any state agency [...]” Cal. Gov’t Code § 11135(a). The legislature has made clear that “breastfeeding or medical conditions related to breastfeeding” fit squarely into “sex” as a protected category. Cal. Gov’t Code § 12926(r)(1). Thus, jails cannot discriminate against postpartum inmates by denying them lactation accommodations.

⁶⁰ Preventing mastitis – by expressing milk – is a serious medical need. If a jail does nothing to prevent mastitis by facilitating a postpartum woman’s lactation, the jail could be showing “deliberate indifference to [her] serious medical needs,” in violation of the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97 (1976). The jail could also be violating the California Penal Code provision that prohibits “any lack of care whatever which would injure or impair the health of the prisoner, inmate, or person confined.” Cal. Penal Code § 673. *See also* ACOG Committee Opinion No. 511, *supra* note 27.

⁶¹ ACOG Committee Opinion No. 511, *supra* note 27.

⁶² *Id.*

⁶³ Cal. Penal Code § 4023.5(b).

⁶⁴ NCCHC Standards 2014, *supra* note 6 at 126 (J-G-08: Contraception).

⁶⁵ Cal. Penal Code § 4023.5(a).

⁶⁶ 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. 535 (2012), [hereinafter *ACOG Committee Opinion No. 535*], <http://www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co535.pdf>.

⁶⁷ Cal. Penal Code § 4023.5(c).

⁶⁸ ACOG Committee Opinion No. 535, *supra* note 66. Despite the fact that birth control is assumedly not useful for contraceptive purposes while a woman is incarcerated, hormonal birth control has numerous other health uses.

⁶⁹ Cal. Penal Code § 4023.5(c).

⁷⁰ *Id.*

⁷¹ NCCHC Standards 2014, *supra* note 64 at 126 (J-G-08: Contraception).

⁷² Prisoner Rape Elimination Act National Standards, 28 C.F.R. § 115.82(c).

⁷³ Cal. Penal Code § 3440.

⁷⁴ Cal. Penal Code § 3440.

⁷⁵ Cal. Penal Code § 4023.5.

⁷⁶ Task Force on Correctional Health Care Standards, *supra* note 12 at 150 (Hygiene and Personal Requirements) (“Toilet paper must be provided to all prisoners and all female prisoners must be issued sanitary napkins and/or tampons when they are needed.”).

⁷⁷ Cal. Penal Code § 3403.

⁷⁸ ACOG Committee Opinion No. 535, *supra* note 66.

⁷⁹ *Id.*

⁸⁰ ACOG Committee Opinion No. 535, *supra* note 66 at 2.

⁸¹ Cal. Penal Code § 3403.

⁸² ACOG Committee Opinion No. 535, *supra* note 66. ; *See also* Cal. Penal Code § 3403.

⁸³ American Cancer Society, *Guidelines for the Early Detection of Cancer* (2015). *See also* The American College of Obstetricians and Gynecologists, *Well-Woman Visit*, Committee on Gynecologic Practice, Committee Opinion No. 534 (2012), [hereinafter *ACOG Committee Opinion No. 534*], <http://www.acog.org/-/media/Committee-Opinions/Committee-on-Gynecologic-Practice/co534.pdf>.

⁸⁴ ACOG Committee Opinion No. 534, *supra* note 83.

⁸⁵ *Id.* *See also* American Cancer Society, *Guidelines for the Early Detection of Cancer*.

⁸⁶ Cal. Penal Code § 3403.

⁸⁷ *See* PREA generally; Task Force on Correctional Health Care Standards, *supra* note 12 at 108, 123 (Health Services for Women; Injuries).

⁸⁸ 28 C.F.R. § 115.61(a).

⁸⁹ *Id.*

⁹⁰ This analysis uses the term “victim” in lieu of the term “survivor” to accurately portray the language used in the PREA statute and standards.

⁹¹ 28 C.F.R. § 115.41(a).

⁹² 28 C.F.R. § 115.42 (b).

⁹³ 28 C.F.R. § 115.13(a).

⁹⁴ 28 C.F.R. § 115.15(d).

⁹⁵ 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.)

⁹⁶ 28 C.F.R. § 115.15 (e).

⁹⁷ 28 C.F.R. § 115.43 (b).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ 28 C.F.R. § 115.41(a); Cal. Penal Code § 2638(b).

¹⁰¹ 28 C.F.R. § 115.21; *see also* NCCHC Standards 2014, *supra* note 6 at 34 (J-B-05: Response to Sexual Abuse) (“Health staff are trained in how to detect, assess, and respond to signs of sexual abuse and sexual harassment, as well as how to *preserve physical evidence* of sexual abuse.”).

¹⁰² 28 C.F.R. 115.82(a)-(b); 28 C.F.R. § 115.83(a)-(c).

¹⁰³ 28 C.F.R. § 115.82(c); 28 C.F.R. § 115.83(d)-(f).

¹⁰⁴ 28 C.F.R. §115.82(d).

¹⁰⁵ Cal. Penal Code § 2639(b); NCCHC Standards 2014, *supra* note 6 at 34 (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.”

¹⁰⁶ 28 C.F.R. § 115.53(a).

¹⁰⁷ 28 C.F.R. § 115.53(c).

¹⁰⁸ 28 C.F.R. § 115.53; ACOG Committee Opinion, No. 535, *supra* note 66.

¹⁰⁹ 28 C.F.R. § 115.51.

¹¹⁰ 28 C.F.R. § 115.11(b); 28 C.F.R. § 115.11(c).

¹¹¹ 28 C.F.R. § 115.67; Cal. Penal Code § 2637(a).

¹¹² 28 C.F.R. § 115.82(d).

¹¹³ 28 C.F.R. § 115.21(c).

¹¹⁴ 28 C.F.R. § 115.22(a-b).

¹¹⁵ 28 C.F.R. § 115.76 (c).

¹¹⁶ Task Force on Correctional Health Care Standards, *supra* note 12 at 87 (Sexuality).

¹¹⁷ Task Force on Correctional Health Care Standards, *supra* note 12 at 67-70 (Communicable Diseases).

¹¹⁸ See APHA policies on quarantine, universal precautions; *Id.* at 67-70.

¹¹⁹ *Id.* at 67-70, 78, 87.

¹²⁰ *Id.* at 70.

¹²¹ ACOG Committee Opinion No. 511, *supra* note 27.

¹²² Task Force on Correctional Health Care Standards, *supra* note 12 at 108 (Health Services for Women).

¹²³ San Francisco Children of Incarcerated Parents Partnership, *Children of Incarcerated Parents: A Bill of Rights*, <http://www.sfcipp.org/images/brochure.pdf>.

¹²⁴ *Id.*, pg 109.

¹²⁵ *Id.*, pg 108.

¹²⁶ Cal. Code Regs. tit. 22, § 79783 (2013).

¹²⁷ Cal. Code Regs. tit. 22, § 79783(a).

¹²⁸ Task Force on Correctional Health Care Standards, *supra* note 12 at 37 (Secondary Care Services).

¹²⁹ Cal. Code Regs. tit. 22, § 79783.

¹³⁰ Cal. Code Regs. tit. 22, § 79783(b).

¹³¹ *Id.*

¹³² Cal. Code Regs., tit. 22, § 79783(c) (2013) (“The governing body shall be responsible and accountable for all services provided through agreements and/ or contracts.”).

¹³³ Task Force on Correctional Health Care Standards, *supra* note 12 at 37 (Secondary Care Services).

¹³⁴ Cal. Code Regs. tit. 15, § 1205.

¹³⁵ Cal. Code Regs. tit. 15, § 1202.

¹³⁶ Task Force on Correctional Health Care Standards, *supra* note 12 at 13-14 (Information Systems).

¹³⁷ NCCHC Standards 2014, *supra* note 6 (J-A-06: Continuous Quality Improvement Program).

¹³⁸ 28 C.F.R. § 115.87.

¹³⁹ *Id.*