

★ KNOW YOUR RIGHTS ★

REPRODUCTIVE HEALTH CARE IN CALIFORNIA JAILS

California has some of the strongest laws in the country that protect your right to access sexual and reproductive health care. Being incarcerated does not mean you lose your rights. You have the right to get the reproductive health care you need while in jail regardless of your gender, gender identity, or gender expression, and regardless of whether you are in a “men’s” facility or “women’s” facility.

If you feel that your rights are being violated and you cannot get the sexual and reproductive health care you need, please contact the ACLU at (213) 201-8919 or email us at GenderReproOutreach@aclusocal.org.

Your rights can look a little bit different depending on whether you are in a jail or prison. The information below is for people who are in jails.

PREGNANCY AND ABORTION CARE

Can I get a pregnancy test in jail?

Yes. You have the right to take a pregnancy test in jail. The law requires the jail to offer you a pregnancy test within 72 hours of your arrival to the jail. You also have the right to request a pregnancy test at any time while in jail.

Only a medical provider or nursing staff can give you a pregnancy test and pregnancy tests must be *voluntary*. This means the jail cannot force you to take a pregnancy test and you can refuse a pregnancy test at any time. This includes during any initial health examinations or screenings when you first get to the jail.

If you refuse a pregnancy test, the jail must ask you to sign a form usually called “Informed Refusal of Pregnancy Test.” Once you sign the form, it will become part of your medical file.

If you prefer to use an outside health provider to determine whether you are pregnant, you have a right to use the outside services instead, but the jail will not cover the cost.

Can I get an abortion while I am in jail?

Yes. Abortion is legal in California and you have the same right to access abortion care regardless of whether you are in jail or not. If you decide to get an abortion and a medical provider says you can do so safely, no one can interfere with your decision. For example, the jail cannot make it harder for you by requiring you to pay or get a court order for transportation.

Will I get medical care if I continue my pregnancy in jail?

Yes. If you decide to carry your pregnancy to term, the jail must make sure that you get the medical care you need while you are pregnant and after you give birth.

You have the right to regular prenatal care visits with a medical provider that follow medical guidelines. For pregnancies without complications, the guidelines require prenatal appointments every four weeks for the first 28 weeks (7 months) of pregnancy,

then every two weeks until 36 weeks (9 months), and then every week after that until you give birth.

But, these are only the minimal recommended visits for a first-time, uncomplicated pregnancy. People with medical or obstetric problems, and pregnant people age 35 or older, may be at higher risk for pregnancy complications. They have the right to health care visits more often, based on the advice of their medical provider.

If you prefer, you also have the right to get your medical care from a medical provider in your community instead of seeing the jail’s medical provider. If you see an outside medical provider instead, the jail will not cover your medical costs.

Can I get more food and other supports I need to have a healthy pregnancy?

Yes. Since pregnant people need more nutrition, the jail must provide you with additional food that is part of a balanced and nutritious diet and prenatal vitamins. The jail must also give you with more safety accommodations such as a lower bunk assignment and lower tier housing.

What support is available to me while I am in jail?

The law requires that you have access to community programs that serve pregnant, birthing, or lactating people. The jail must notify you about available programs.

Are there restrictions on how the jail can restrain me when I am pregnant?

Yes. When a person is pregnant, they are more likely to fall because of how pregnancy changes the body. Jails cannot shackle or restrain you with leg irons, waist chains, or handcuffs behind your body. While you are pregnant, the jail can – but does not have to – handcuff you in front of your body. These restrictions apply during your pregnancy, while you are in labor, and while you recover in the hospital after you give birth. They also apply during travel, for example, to court or a hospital. The jail also cannot taser you or expose you to pepper spray or other chemical weapons when you are pregnant under any circumstances.

LABOR AND DELIVERY CARE

Do I have the right to go to a hospital once I go into labor?

Yes. Once you go into labor you should be taken to a hospital and the jail should treat the situation like a medical emergency.

Can I have a support person with me during labor?

Yes. You may have one support person present during labor, childbirth, and postpartum recovery in the hospital. The support person can be someone who is an approved visitor of the jail or a designated member of the jail's staff to assist with labor, childbirth, and postpartum care. Ask about this early so you can make sure to fill out any necessary paperwork with the jail.

Are there restrictions on how the jail can restrain me when I'm giving birth?

Yes. When you are in labor, during delivery, or in recovery, jail staff cannot restrain you by your wrists or ankles unless it is necessary for safety reasons. If you are restrained, and the medical provider responsible for your care tells an officer to remove your restraints, the officer must listen to the medical provider and remove them. The medical provider has the final say.

How much privacy can I have during labor?

During labor, you have the right to the highest level of privacy possible. If an officer or guard is present, then they must be stationed outside the room, unless there are extraordinary circumstances. Even then, the guard must stand in a place that provides the most privacy to you. If the medical provider responsible for your care says that the guard's removal is medically necessary, then the guard must be removed.

POSTPARTUM CARE (AFTER GIVING BIRTH)

What medical care should I get after I give birth?

The jail must also make sure that you receive the medical care you need after you give birth. You have a right to postpartum care according to medical guidelines. The guidelines recommend visiting your health care provider within the first three weeks after giving birth. After this visit, you should receive ongoing care as needed based on the advice of your medical provider. Your postpartum care should end with a comprehensive postpartum visit no later than 12 weeks after you give birth. But, if you had a higher risk pregnancy, you may need more postpartum care visits.

If I am breast/chest feeding, can I get the breast/chest milk to my baby?

Yes. All jails must establish a pump-and-pick-up policy in which:

- The jail provides all equipment for you to pump breast/chest milk.
- The jail stores your breast/chest milk in a refrigerator or freezer.

- The jail allows you to choose people on the outside to pick up the breast/chest milk.
- The jail provides the breast/chest milk to your designated people for delivery to your baby.

PARENTING OPTIONS

What are my parenting options while I am in jail?

If you are in jail while your child is born, you have the right to choose the parenting option that is best for you. You have the right to information about how to care for your newborn. You also have the right to choose a relative or friend to look after the child until you are released. You can also choose to place the child in foster care or for adoption. Before making your decision, you should speak to a lawyer who specializes in family law.

BIRTH CONTROL OPTIONS

Can I stay on birth control while I am in jail?

Yes. If you are on a birth control method prescribed by your medical provider, the jail must let you continue it.

Can I start a new birth control method while I am in jail?

Yes, if you are close to release. The jail must make birth control options available to you at least 60 days before your release date. If you request birth control at the time of your release, the jail must make sure you get it. The jail does not have to give you a new birth control method if you are more than 60 days away from your release date.

If you request emergency contraception, either because you experienced sexual assault or because you had unprotected sex right before you were incarcerated, the jail must provide it. The jail must also educate you about what birth control methods are available.

It is important to note that, by law, you cannot be sterilized (a tubal ligation or a vasectomy) for birth control reasons while you are in jail. You can access sterilization procedures if need them for reasons other than birth control.

TESTING AND TREATMENT FOR SEXUALLY TRANSMITTED INFECTIONS (STIs)

Can I get tested for HIV or STIs in Jail?

The law does not require jails to offer HIV and STI testing except for pregnant people, but experts recommend that they do so. If you are tested, it must be voluntary. This means you must be able to refuse it.

Jails should also provide education about STIs, including how to prevent getting or transmitting STIs, symptoms, and treatment.

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Does the jail have to give me treatment for HIV or other STIs?

Yes. The jail must provide treatment for serious medical needs. Health experts say that the HIV and STI treatments should be consistent with federal treatment guidelines.

Can I get methadone treatment?

Yes. If you have used or are using opioids, or are already using methadone, the jail is required to offer you medication assisted treatment with methadone or buprenorphine. The jail is also required to provide you with information about the risks of withdrawal.

If I am pregnant, can I get testing or treatment for infectious diseases?

Yes. If you are pregnant, you can request that the jail provide you with timely testing and treatment for infectious diseases. This includes COVID-19 and sexually transmitted infections.

ACCESS TO MENSTRUAL PRODUCTS

Does the jail have to give me menstrual products for my period?

Yes. You have the right to access free menstrual products, including both pads and tampons. The jail must provide you with enough pads and tampons for your entire menstrual cycle or as needed as part of pregnancy or postpartum care. Any person who needs the supplies must be allowed to use them, regardless of the person's gender identity or gender expression.

The jail cannot deny menstrual products as a form of punishment.

RIGHTS AROUND SEXUAL ASSAULT

I was raped, sexually assaulted, and/or sexually harassed. What are my rights?

The jail must give you the medical and mental health care you need after you experience rape, sexual assault or harassment.

This includes any urgent treatment for your injuries, testing and treatment for possible sexually transmitted infections, emergency contraception, and counseling. You have the right to such care if the assault occurs while you are in custody. You also have the right to such care if you tell the jail staff that you experienced sexual assault soon before you arrived at the jail.

The jail must also investigate any incidents that took place while you were in jail, and provide you with supportive services like counseling. The jail has a duty to prevent rape, sexual assault, and harassment. When incidents occur, the jail must take the incident seriously, protect and support the survivor, and hold the wrongdoers accountable. The jail must allow you to report instances of rape, sexual assault, or harassment anonymously and to anyone on jail staff that you trust. Jail staff must keep your identity confidential, and they have a duty to protect you from retaliation by other incarcerated people or staff if you report rape, sexual assault or harassment.

If you do not feel comfortable reporting to or getting counseling from jail staff, the jail must let you access outside service providers who help people who have experienced sexual assault.

Can officers or guards watch me undress or search my body?

You should be able to undress, shower, and use the restroom without an officer of a different gender watching you. Jails cannot conduct cross-gender strip searches, body cavity searches, and pat downs unless there is a true emergency or the search is conducted by a medical provider.

Jails are never allowed to conduct a search for the sole purpose of determining a person's genital status. Jails must train staff to conduct professional and respectful searches of transgender and intersex people. If you are transgender, jails should give you an option as to the gender of the person who searches you, depending on what makes you most comfortable.

If you feel that your rights are being violated and you aren't able get the sexual and reproductive health care you need, please contact us.



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