



C A L I F O R N I A

DEPARTMENT OF JUSTICE

REPORT ON REPRODUCTIVE HEALTHCARE ACCESS IN CALIFORNIA COUNTY JAILS

AUGUST 2023

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EXECUTIVE SUMMARY

All Californians have the right to reproductive healthcare, regardless of incarceration status. To better understand the extent to which county jails provide for the reproductive healthcare rights of their prisoners, the California Department of Justice (DOJ) obtained and reviewed jail manuals from 53 of California's 58 counties¹ for compliance with state law in seven reproductive health policy areas. These areas include abortion, pregnancy testing, choice of provider, birth control, birthing, menstrual products, and breast milk feeding. DOJ's review concluded that many county jail detention policies were not fully compliant with the law.

Accordingly, DOJ issued corrective letters to the 53 counties. As of the date of this report (8/24/23), 51 counties have now come into compliance with legal requirements; 2 remain out of compliance. This report summarizes DOJ's findings.

KEY FINDINGS

- Only one policy manual was fully compliant with state and federal law in all seven policy areas.
- Twenty-eight counties had jail manuals that were mostly compliant, with deficiencies or omissions in one or two policy areas.
- Eight counties' jail manuals were not fully compliant in any of the seven policy areas.
- Four counties' jail manuals were not compliant in four or more policy areas.
- County jail manuals were most frequently compliant with breast milk feeding policy requirements. This requirement was signed into law in 2018 with the passage of AB 2507 and went into effect January 1, 2020.
- Counties' menstrual products policies were generally the least compliant of the seven policy areas, as the policies frequently contained ambiguities about whether inmates were required to pay for menstrual products. State law requires that menstrual products be made available at no cost for menstruating prisoners, regardless of indigence or length of time jailed.

¹ The five counties not included in this review are: Alpine, Los Angeles, Riverside, Santa Clara, and Sierra. Alpine and Sierra do not house inmates within their counties—they instead contract with another county to house their inmates—thus, they did not have their own jail manuals. Los Angeles, Riverside, and Santa Clara are part of a separate review. Los Angeles County Sheriff's Office and Santa Clara County Sheriff's Office did not receive letters from the Attorney General due to open, ongoing investigations into broader jail practices. (See Attorney General Becerra Launches Civil Rights Investigation of the Los Angeles County Sheriff's Department (Jan. 22, 2021), <https://oag.ca.gov/news/press-releases/attorney-general-becerra-launches-civil-rights-investigation-los-angeles-county> [announcing LA County jail investigation]; Attorney General Bonta Opens Civil Rights Investigation into Santa Clara County Sheriff's Office (Jan. 19, 2022), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-opens-civil-rights-investigation-santa-clara-county> [announcing Santa Clara County jail investigation].) Riverside County was not included in the final review due to open, ongoing investigations into broader jail practices. (Attorney General Bonta Launches Civil Rights Investigation into Riverside County Sheriff's Office (Feb. 23, 2023), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-launches-civil-rights-investigation-riverside-county> [announcing Riverside County jail investigation].)

Table 1 - Count of Counties Compliant with Policy Area

Policy	Fully Compliant	Mostly Compliant	Somewhat Compliant	Not Compliant
Abortion	3	20	27	3
Pregnancy Testing	14	24	12	3
Choice of Provider	30	7	4	12
Birth Control	11	20	17	5
Birthing	17	6	27	3
Menstrual Product	10	15	3	25
Breast Milk Feeding	34	3	5	11

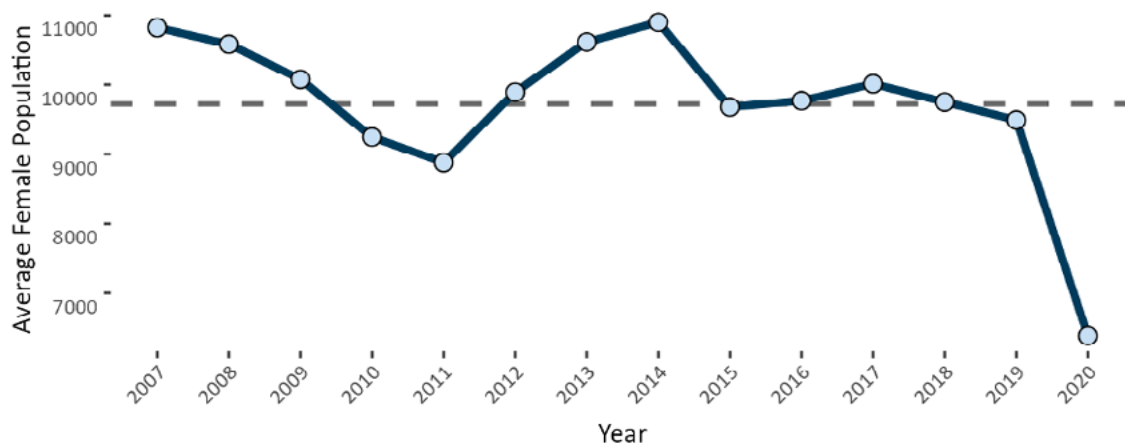
REPRODUCTIVE HEALTHCARE IN CALIFORNIA COUNTY JAILS

California state laws mandate that county jails provide incarcerated people with access to a range of reproductive healthcare services.² In August 2020, the California Legislature strengthened protections for incarcerated people by passing AB 732, the Reproductive Dignity for Incarcerated People Act, authored by then-Assembly member Rob Bonta.³ Federal law, specifically the Prison Rape Elimination Act (PREA), also mandates that county jails ensure incarcerated people who are victims of sexual assault while incarcerated have access to reproductive healthcare.

These legal requirements are designed to protect incarcerated persons' access to reproductive healthcare. Counties are required to publish a "manual of policy and procedures" for the jail facility, which should be comprehensively reviewed and updated every two years, and be made available to all employees. (Cal. Code Regs., tit. 15, § 1029.) And California state regulations require that counties maintain health-related policies consistent with current law. Section 1206 of Title 15 of the California Code of Regulations states that in local detention facilities, "[t]he health authority shall, in cooperation with the facility administrator, set forth in writing, policies and procedures in conformance with applicable state and federal law which are reviewed and updated at least every two years." While institutions of incarceration should be meeting the health needs of people behind bars, reproductive healthcare needs are often uniquely time-sensitive.

In light of this, DOJ undertook a review of county jail manuals as a first step in evaluating reproductive healthcare access in California county jails. Proper jail manuals that accurately incorporate reproductive rights laws are essential to ensuring that jail staff are informed of their duties and prisoners are aware of their rights.

Figure 1 - Female Population in California County Jails (Aggregate Statewide), Over Time⁴



2 Pen. Code, §§ 4023.8, subs. (a)-(c), (q), 4028, subs. (a), (c) [abortion]; Pen. Code, § 4023.8, subd. (a) [pregnancy testing]; Pen. Code, § 4023.6 [choice of provider]; Pen. Code, §§ 3440, 4023.5 [birth control]; Pen. Code, §§ 3407, subs. (b)-(c), 4023.8, subs. (l)-(m), (o) [birthing]; Pen. Code, § 4023.5, subd. (a) [menstrual products]; Pen. Code, § 4002.5 [breast milk feeding]. Some federal laws also have requirements related to reproductive health policies for jail facilities, including county jails. (28 C.F.R. §§ 115.82, 115.83; see also 28 C.F.R. § 115.5 [defining "jail" as "a confinement facility of a Federal, State, or local law enforcement agency whose primary use is to hold persons pending adjudication of criminal charges, persons committed to confinement after adjudication of criminal charges for sentences of one year or less, or persons adjudicated guilty who are awaiting transfer to a correctional facility"].).

3 A.B. 732, 2020 Leg., 2019-2020 Reg. Sess. (Cal. 2020).

4 California Board of State and Community Corrections (BSCC), <https://bscc.ca.gov/performance-metrics-for-community-corrections/>.

Figure 1 shows the average female population in California county jails from 2007 to 2020.⁵ Between 2007 and 2020, the average daily number of female inmates in California county jails was 9,720 (shown as the dashed line). The female jail population decreased sharply in 2020 due to the COVID-19 pandemic.⁶

JAIL MANUAL EVALUATION PROCESS

On February 14, 2022, the DOJ sent a letter to the sheriff or administrator of each county jail in California requesting copies of their jail custody manuals or policies, citing applicable state or federal laws.⁷

In total, the DOJ reviewed jail manuals from 53 of California’s 58 counties.⁸ The DOJ evaluated each jail’s manual, looking at the following seven policies for compliance with California and federal law:

- **Abortion:** Jail manuals are required to set forth inmates’ rights and care requirements related to an abortion to terminate an inmate’s pregnancy. (Pen. Code, §§ 4023.8, subds. (a)-(c), (q), 4028, subds. (a), (c).)
- **Pregnancy Testing:** Jail manuals are required to set forth the requirement to offer inmates a pregnancy test upon intake and request, and following a sexual assault. (Pen. Code, § 4023.8, subd. (a); 28 C.F.R. § 115.83.)
- **Choice of Provider:** Jail manuals are required to set forth the right to summon and receive the services of any physician, nurse practitioner, certified nurse midwife, or physician assistant of the inmate’s choice in order to determine whether they are pregnant and receive pregnancy care. (Pen. Code, § 4023.6.)
- **Birth Control:** Jail manuals are required to set forth procedures governing the continuation of birth control measures prescribed prior to incarceration, the provision of information and education regarding the availability of family planning services while incarcerated, access to emergency contraception following a sexual assault, and birth control access prior to a scheduled release. (Pen. Code, §§ 3440, 4023.5; 28 C.F.R. § 115.82.)
- **Birthing:** Jail manuals are required to set forth procedures for the use of restraints while an inmate is in labor and delivering their baby. (Pen. Code, §§ 3407, subds. (b)-(c), 4023.8, subds. (l)-(m), (o).)
- **Menstrual Products:** Jail manuals are required to set forth the requirement that jails provide the materials necessary for personal hygiene with regard to an inmate’s menstrual cycle and reproductive system. (Pen. Code, § 4023.5, subd. (a); Cal. Code Regs., tit. 15, § 1265.)
- **Breast Milk Feeding:** Jail manuals are required to set forth the procedures to support infant and toddler breast milk feeding for lactating inmates. (Pen. Code, § 4002.5.)

5 The average daily population aggregate is calculated by averaging the monthly average daily population of female jail inmates reported in the state.

6 The DOJ recognizes that not all individuals with uteruses identify as “female” in the common use of that term to refer to gender identity.

7 Press Release: Attorney General Bonta Takes Action to Ensure Legally Mandated Reproductive Healthcare is Provided in County Jails (Feb. 14, 2022), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-takes-action-ensure-legally-mandated-reproductive>.

8 As a reminder, this investigation did not include review of Los Angeles County and Santa Clara County (see footnote 1). And, Alpine County and Sierra County do not house jail inmates and thus do not have jail manuals.

The DOJ evaluated each jail’s manual, looking at these seven areas for compliance with California and federal law. Each of the seven policy areas was divided up into subcomponents. The level of compliance with each category was based on compliance with each subcomponent included in the county’s policies. The DOJ then assigned a qualitative score ranging from “fully compliant,” “mostly compliant,” “somewhat compliant,” and “not compliant” for each policy area in each manual.

- Fully Compliant:
 - The policy complied with all parts of relevant California and federal law.
- Mostly Compliant:
 - The policy complied with most requirements but did not address one or two parts of relevant California or federal law.
- Somewhat Compliant:
 - The policy complied with some requirements but did not meet multiple parts of California or federal law.
- Not Compliant:
 - The policy did not comply with most or all parts of relevant California and federal law.
 - The policy area was omitted entirely.

COMPLIANCE BY POLICY AREA

Figure 2 shows compliance levels for each policy area across the 53 county jail manuals. The darkest areas denote the highest level of compliance (“fully compliant”) while the lightest areas denote the lowest level of compliance (“not compliant”). Rows represent specific counties’ compliance with each policy area, while columns represent compliance in a policy area across all counties.

As Figure 2 shows, jail manuals most often met the “fully compliant” threshold when discussing the breast milk feeding policy and the choice of provider policy. Jail manuals were least likely to be compliant with the menstrual products policy. The abortion policy was another area where manuals had low rates of compliance. Though relatively few were “not compliant,” many manuals’ abortion policies were only “somewhat compliant.”

COMPLIANCE BY COUNTY

Figure 3 shows the compliance performance of each county. Rather than showing compliance in specific policy areas, Figure 3 displays the number of policy areas for which the manual was “fully compliant” (darkest shading), “mostly compliant,” “somewhat compliant,” and “not compliant” (lightest shading). A row with significantly darker shading denotes a county that was “fully compliant” or “mostly compliant” in many policy areas. A row with lighter shading denotes a county that was “somewhat compliant” or “not compliant.” Only one county was compliant in all seven policy areas. Twenty-eight jail manuals were “mostly compliant,” with deficiencies or omissions in one or two policy areas. Eight jail manuals did not have a single policy area in which they were “fully compliant.”

Figure 2 - County Compliance Scores in Each Policy Area

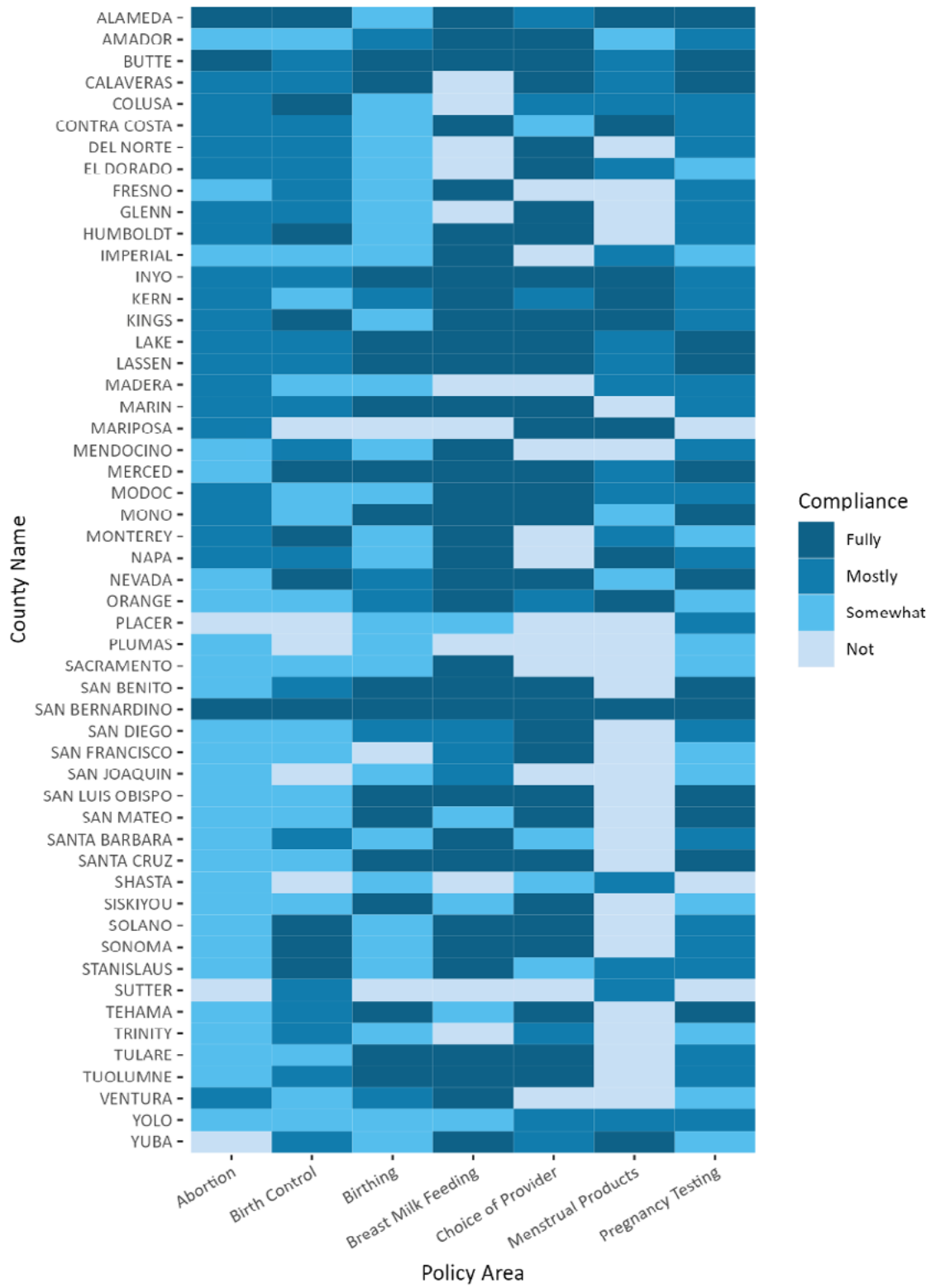
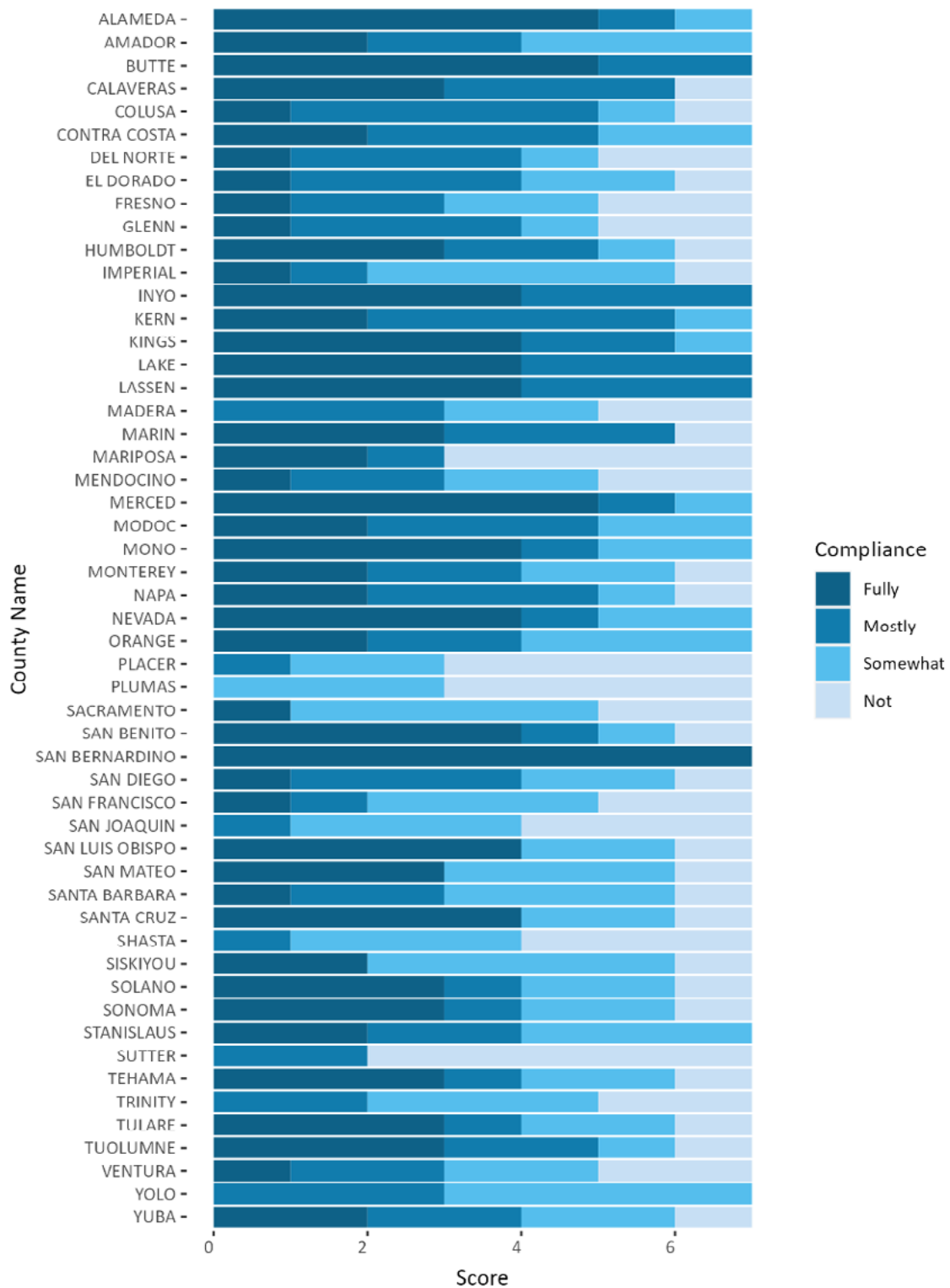


Figure 3 - Compliance Scores across Counties



1 - ABORTION

REQUIREMENTS UNDER CALIFORNIA LAW

The state forbids the imposition of any conditions or restrictions on abortion access, regardless of incarceration status. (Pen. Code, § 4028, subds. (a), (c).) Additionally, incarcerated persons with a positive pregnancy test result must be offered comprehensive and unbiased options counseling that includes information about prenatal healthcare, adoption, and abortion. (Pen. Code, § 4023.8, subds. (a)-(c), (q).)

ABORTION POLICY EVALUATION METHODOLOGY

The following six subcomponents were used to evaluate each county’s abortion policy:

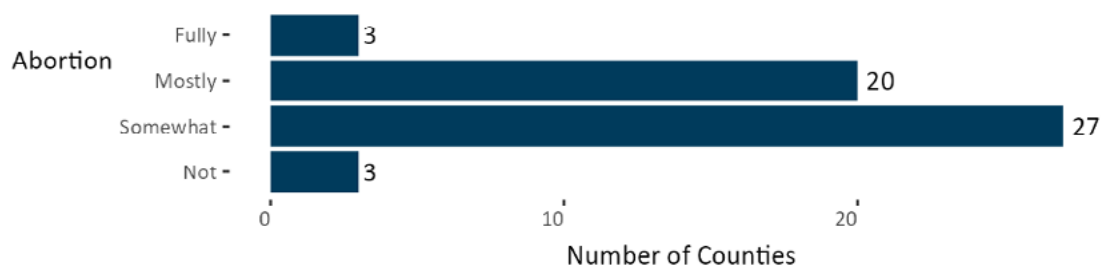
- No restrictions on abortion access that are inconsistent with state law (i.e. gestational limits inconsistent with state law, unreasonable delay, or court orders required for abortion access);
- Providing comprehensive and unbiased options-counseling;
- Prohibiting jail staff from urging, forcing, or influencing a pregnant person’s decision regarding their pregnancy;
- Prohibiting nonmedical staff from having any authority to decide abortion eligibility, requiring that all pregnant people receive all due medical care until they are no longer pregnant, and requiring that a pregnant person wanting an abortion be referred to a licensed healthcare provider with reproductive healthcare training;
- Abortion rights must be posted in a conspicuous place to which all incarcerated persons have access; and
- Payment for abortion cannot be required if the inmate is unable to pay.

A “fully compliant” policy had no deficiencies or omissions in any of these six categories. A “mostly compliant” policy had deficiencies or omissions in one or two categories. A “somewhat compliant” policy had deficiencies or omissions in three to five categories. And a policy that was “not compliant” had deficiencies or omissions in all six categories.

FINDINGS

The majority of jail manuals were either “mostly compliant” or “somewhat compliant” with respect to their abortion policies. Three manuals were “fully compliant,” while three others were “not compliant.”

Figure 4 - Abortion Policy Compliance by Level



Abortion policies in custody manuals tended to be general, simply affirming that pregnant inmates have the same right to an abortion as non-incarcerated people in California. Some had a specific

policy offering comprehensive counseling for pregnant inmates and some had a policy outlining that jail staff would provide transportation and supervision for abortion services. Many policies failed to disallow non-medical staff to decide whether an inmate may obtain an abortion, or otherwise coerce or influence the inmate’s decision. Often, policies were based on outdated or repealed laws.

2 - PREGNANCY TESTING

REQUIREMENTS UNDER CALIFORNIA AND FEDERAL LAW

California law requires that an inmate who is possibly pregnant or capable of becoming pregnant be offered a pregnancy test upon intake within 72 hours of arrival at the jail and upon request at any time during incarceration. (Pen. Code, § 4023.8, subd. (a).) The test must be voluntary and administered by medical or nursing staff, and anyone who declines is required to sign an “Informed Refusal of Pregnancy Test.” (*Ibid.*) Federal law requires that inmate victims of sexual assault while incarcerated be offered pregnancy tests, free of cost and regardless of whether the inmate agrees to cooperate with any investigation. (28 C.F.R. § 115.83, subds. (d), (g).)

PREGNANCY TESTING POLICY EVALUATION METHODOLOGY

The following five subcomponents were used to evaluate each county’s pregnancy testing policy:

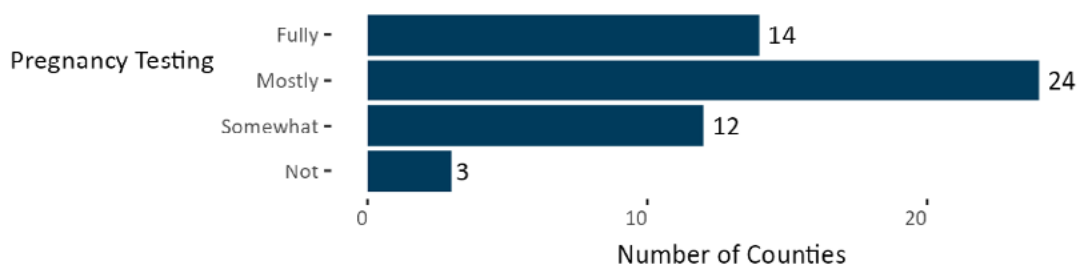
- Testing must be offered within 72 hours of arrival at the jail (at intake) and upon request;
- Testing must be voluntary;
- Testing must only be administered by medical or nursing personnel;
- Rights must be posted in a conspicuous place to which all incarcerated persons have access; and
- Victims of sexual assault must be offered pregnancy tests and treatment (for free and without having to comply with any investigation).

A “fully compliant” policy had no deficiencies or omissions in any of these five categories. A “mostly compliant” policy had deficiencies or omissions in one or two categories. A “somewhat compliant” policy had deficiencies or omissions in three or four categories. And a policy that was “not compliant” had deficiencies or omissions in all five categories.

FINDINGS

Fourteen manuals were “fully compliant” with laws on pregnancy testing while only three manuals were “not compliant.” Thirty-six manuals were in the “mostly compliant” and “somewhat compliant” categories combined.

Figure 5 - Pregnancy Testing Policy Compliance by Level



Compliance with pregnancy testing policy requirements varied widely across manuals. Only about half of manuals were in compliance with the requirements that pregnancy tests be offered within 72 hours of arrival at the jail and that tests must be voluntary.

3 - CHOICE OF PROVIDER

REQUIREMENTS UNDER CALIFORNIA LAW

Incarcerated people have the right to summon and receive the services of any physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice in order to determine whether they are pregnant and the extent of services needed if found to be pregnant, and to receive needed medical care from their chosen provider. (Pen. Code, § 4023.6, subds. (a), (b).) The costs of the healthcare services can be charged to the incarcerated person. (§ 4023.6, subd. (b).)

CHOICE OF PROVIDER POLICY EVALUATION METHODOLOGY

The following four subcomponents were used to evaluate each county’s choice of provider policy:

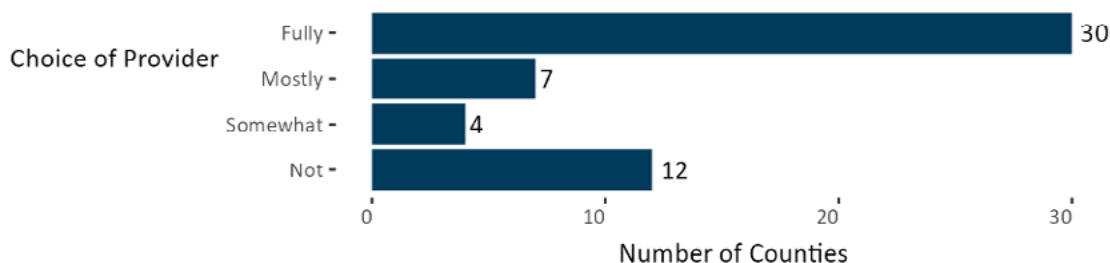
- Inmates have the right to summon and receive the services of any physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice to determine whether they are pregnant;
- If found to be pregnant, inmates are entitled to a determination of the extent of medical and/or surgical services needed, and to receive such needed services, from any physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice;
- All expenses for provider services not provided by the facility must be paid by the inmate; and
- Rights must be posted in a conspicuous place to which all incarcerated persons capable of pregnancy have access.

A “fully compliant” policy had no deficiencies or omissions in any of these four categories. A “mostly compliant” policy had deficiencies or omissions in one or two categories. A “somewhat compliant” policy had deficiencies or omissions in three categories. And a policy that was “not compliant” had deficiencies or omissions in all four categories.

FINDINGS

Of the 53 jail manuals reviewed, 30 were fully compliant with the choice of provider requirements. Twelve manuals were not compliant.

Figure 6 - Choice of Provider Policy Compliance by Level



Over half of California counties were in compliance with the choice of provider requirements. “Fully compliant” and “mostly compliant” manuals contained policies allowing inmates to receive pregnancy

services from a physician or other medical practitioner of their choice. “Somewhat compliant” manuals did not include language specific to pregnant inmates. Manuals that were “not compliant” did not include language about a choice of provider.

4 - BIRTH CONTROL

REQUIREMENTS UNDER CALIFORNIA LAW

Incarcerated people have the right to continue their birth control measures, as prescribed by a provider, while in county jail. (Pen. Code, § 4023.5, subd. (a).) All inmates must be provided with information and education “regarding the availability of family planning services,” and family planning services must be offered to all inmates at least sixty days prior to a scheduled release. (§ 4023.5, subds. (b), (c).) On request, the county is required to provide access to a physician necessary to meet the inmate’s family planning needs at the time of their release. (§ 4023.5, subd. (c).) Victims of sexual abuse must be “offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis,” where medically appropriate, free of cost and regardless of whether the inmate agrees to cooperate with any investigation. (28 C.F.R. § 115.82, subds. (c), (d).)

BIRTH CONTROL POLICY EVALUATION METHODOLOGY

The following five subcomponents were used to evaluate each county’s birth control policy:

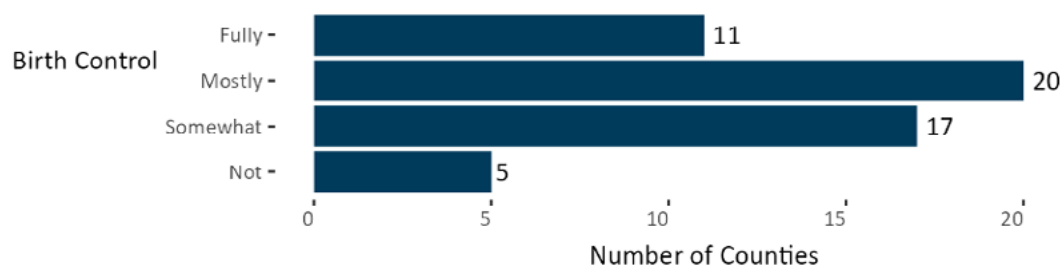
- Inmates have the right to continue their prescribed method of birth control at intake and upon request;
- Every inmate must be provided with information and education about the availability of family planning services;
- Family planning services must be offered to all incarcerated people at least 60 days before their scheduled release date;
- Victims of sexual abuse while incarcerated must be offered access to emergency contraception without cost and without having to comply with any investigation; and
- Victims of sexual abuse while incarcerated must be offered access to post-exposure prophylaxis without cost and without having to comply with any investigation.

A “fully compliant” policy had no deficiencies or omissions in any of these five categories. A “mostly compliant” policy had deficiencies or omissions in one or two categories. A “somewhat compliant” policy had deficiencies or omissions in three or four categories. And a policy that was “not compliant” had deficiencies or omissions in all five categories.

FINDINGS

In the DOJ’s review, 11 manuals were “fully compliant” with laws governing birth control. Like compliance with pregnancy testing laws, only five manuals were “not compliant.” There were 37 manuals in the “mostly compliant” and “somewhat compliant” categories combined.

Figure 7 – Birth Control Policy Compliance by Level



Most counties appeared to be in compliance with the requirement that incarcerated people be allowed to continue their birth control measures, as prescribed by a provider, while in county jail. Manuals found to be “somewhat compliant” or “not compliant” made no reference to the Prison Rape Elimination Act (PREA) requirements or placed limits on continuation of birth control.

5 – BIRTHING

REQUIREMENTS UNDER CALIFORNIA LAW

Restraining a pregnant inmate during labor, delivery, and recovery is prohibited, except if “deemed necessary for the safety and security of the inmate, the staff, or the public.” (Pen. Code, § 3407, subd. (c).) Even in these circumstances, if the medical professional responsible for the inmate’s care “determines that the removal of restraints is medically necessary,” they must be removed. (*Ibid.*) Childbirth must be treated as an emergency and the inmate must be transported to a hospital “in the least restrictive way possible.” (Pen. Code, § 4023.8, subd. (l).) The law also requires that an incarcerated pregnant person is allowed to “have a support person present during labor, childbirth, and during postpartum recovery while hospitalized.” (Pen. Code, § 4023.8, subd. (m).) During labor and delivery, the incarcerated pregnant person must “be given the maximum level of privacy possible.” (§ 4023.8, subd. (o).)

BIRTHING POLICY EVALUATION METHODOLOGY

The following six subcomponents were used to evaluate each county’s birthing policy:

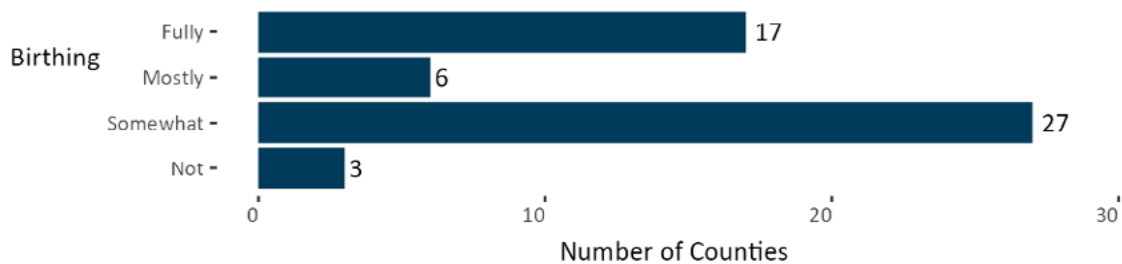
- No restraints allowed during labor, delivery, or recovery, except as necessary for the safety and security of the inmate, the staff, or the public;
- If a medical professional determines that removal of any restraints is medically necessary, they must be removed;
- Childbirth must be treated as an emergency;
- Inmates who are in labor must be transported to the hospital in the least restrictive way possible;
- A pregnant inmate must be allowed to have a support person present during labor, childbirth, and postpartum recovery while hospitalized; and
- A pregnant inmate must be given the maximum level of privacy possible during labor and delivery.

A “fully compliant” policy had no deficiencies or omissions in any of these six categories. A “mostly compliant” policy had deficiencies or omissions in one or two categories. A “somewhat compliant” policy had deficiencies or omissions in three to five categories. And a policy that was “not compliant” had deficiencies or omissions in all six categories.

FINDINGS

Birthing policies were largely “fully compliant” or “somewhat compliant.” Seventeen manuals were “fully compliant” but twenty-seven were only “somewhat compliant” with respect to their birthing policies. Six manuals were “mostly compliant” and three manuals were “not compliant” at all.

Figure 8 - Birthing Policy Compliance by Level



“Fully compliant” manuals prohibited restraints, allowed for a support person, always treated childbirth as an emergency, required transport in the least restrictive way possible to the hospital for labor/delivery, and provided the maximum privacy possible. Other manuals were unclear about whether childbirth would be treated as an emergency and had unclear language on a number of provisions like the use of restraints, transport in the least restrictive way possible, availability of a support person, and privacy during labor and delivery.

6 - MENSTRUAL PRODUCTS

REQUIREMENTS UNDER CALIFORNIA LAW

Under California law, people incarcerated in county jails must be provided menstrual products upon request, free of charge, regardless of the inmate’s ability to pay. (Pen. Code, § 4023.5, subd. (a); Cal. Code Regs., tit. 15, § 1265.) Any person confined in a county jail “shall, upon request, be allowed to continue to use materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system, including, but not limited to, sanitary pads and tampons, at no cost to the incarcerated person.” (Pen. Code, § 4023.5, subd. (a).)

MENSTRUAL PRODUCT POLICY EVALUATION METHODOLOGY

The following two subcomponents were used to evaluate each county’s menstrual product policy:

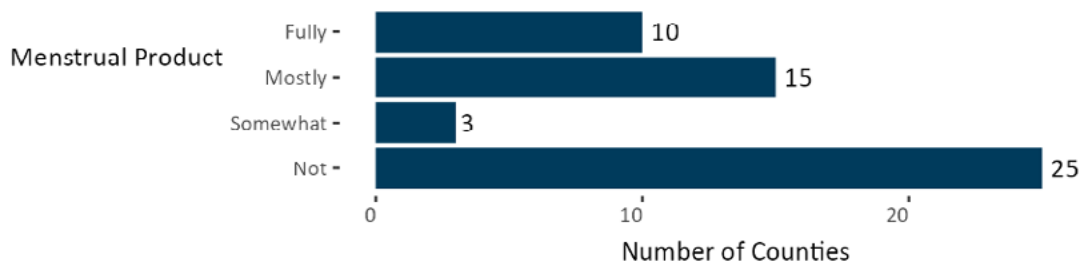
- Inmates must be provided with menstrual products upon request, including (but not limited to) sanitary pads and tampons; and
- Menstrual products must be provided free of charge to all inmates, regardless of indigency status or length of time incarcerated.

A “fully compliant” policy had no deficiencies or omissions in either of these two categories. A “mostly compliant” policy was ambiguous as to whether anyone can be charged for menstrual products. A “somewhat compliant” policy clearly charged inmates (either all inmates or those who are not indigent) for menstrual products. And a policy that was “not compliant” had deficiencies or omissions in both categories.

FINDINGS

Of the 53 facility manuals evaluated, only 10 were “fully compliant” with California law. Notably, 25 county manuals were “not compliant” with the law.

Figure 9 - Menstrual Policy Compliance by Level



“Fully compliant” manuals had clear language about sanitary napkins, tampons, and panty liners and specified that they were available on request as needed and at no charge for all inmates. Some manuals improperly imposed indigence requirements for cost-free access to menstrual products or only provided them for inmates incarcerated for longer than 24 hours.

7 - BREAST MILK FEEDING

REQUIREMENTS UNDER CALIFORNIA LAW

The law requires county jails to have breast milk feeding policies. (Pen. Code, § 4002.5, subd. (a).) The sheriff or administrator of every county jail is required to develop a breast milk feeding policy for lactating inmates. (*Ibid.*) The policy must provide medically appropriate support and care related to the cessation of lactation or weaning. (*Ibid.*) The policy must also allow for breast milk expression, disposal, and same-day storage for later retrieval and delivery to an infant or toddler by an approved person, at the option of the lactating inmate and with the approval of the facility administrator. (*Ibid.*) The policy must also condition an inmate’s participation in the program upon the inmate undergoing drug screening. (*Ibid.*) The breast milk feeding policy must be posted in all locations in the jail where medical care is provided and communicated to all staff members who interact with or oversee pregnant or lactating inmates. (§ 4002.5, subd. (b).)

BREAST MILK FEEDING POLICY EVALUATION METHODOLOGY

The following four subcomponents were used to evaluate each county’s breast milk feeding policy:

- Must provide for medically appropriate support and care related to the cessation of lactation or weaning;
- Must provide for milk expression, disposal, and same day storage for later retrieval and delivery to the infant or toddler by an approved person, at the option of the lactating inmate and with the approval of the facility administrator;

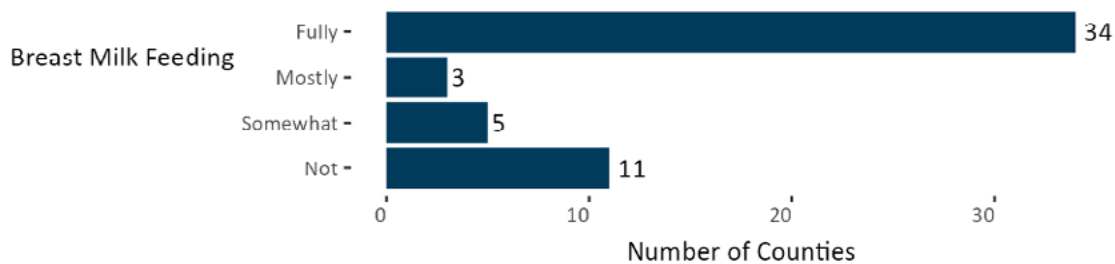
- Participation in the breast milk feeding program must be conditioned on the inmate undergoing a drug screening; and
- Policy must be posted in a conspicuous place where medical care is provided and communicated to all staff who interact with pregnant or lactating inmates.

A “fully compliant” policy had no deficiencies or omissions in any of these four categories. A “mostly compliant” policy had deficiencies or omissions in one or two categories. A “somewhat compliant” policy had deficiencies or omissions in three categories. And a policy that was “not compliant” had deficiencies or omissions in all four categories.

FINDINGS

Most counties were in compliance with these provisions, with thirty-four that were “fully compliant” and three in the “mostly compliant” category. Eleven county manuals were “not compliant” with the breast milk feeding policy requirements.

Figure 10 - Breast Milk Feeding Policy Compliance by Level



“Fully compliant” manuals had language providing for lactation programs, including milk delivery to infants, lactation cessation, and equipment like breast pumps to facilitate breast milk feeding. Some “mostly compliant” policies lacked language on the cessation or weaning of breast milk feeding. Manuals that had generic language about the need to develop a policy but did not provide details of such a program were deemed to be only “somewhat compliant.”

DOJ EFFORTS

[1] On February 11, 2022, Attorney General Bonta sent [letters](#) to nearly every sheriff or county jail administrator reminding them of their duty to comply with California and federal law and seeking evidence of such compliance.⁹

[2] After sending these letters, the DOJ reviewed the county manuals provided by the counties for compliance.

[3] DOJ issued corrective letters to counties on or before December 23, 2022.

[4] DOJ reviewed supplemented materials from counties and provided feedback to counties to ensure their policies were brought into compliance.

COMPLIANCE FOLLOWING DOJ EFFORTS

As of the publication of this report, 51 counties' policies are fully compliant. The following counties responded to DOJ's requests for revisions in a timely manner and updated their policies accordingly: Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Orange, Placer, Plumas, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Tehama, Trinity, Tulare, Tuolumne, Ventura, and Yolo.

The following two counties are still working with the DOJ to fully bring their policies into compliance with the requirements of California state and federal law: Sutter and Yuba.¹⁰

9 Los Angeles County Sheriff's Office and Santa Clara County Sheriff's Office did not receive letters from the Attorney General due to open, ongoing investigations into broader jail practices. (See Attorney General Becerra Launches Civil Rights Investigation of the Los Angeles County Sheriff's Department (Jan. 22, 2021), <https://oag.ca.gov/news/press-releases/attorney-general-becerra-launches-civil-rights-investigation-los-angeles-county> [announcing LA County jail investigation]; Attorney General Bonta Opens Civil Rights Investigation into Santa Clara County Sheriff's Office (Jan. 19, 2022), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-opens-civil-rights-investigation-santa-clara-county> [announcing Santa Clara jail investigation].) Riverside County was not included in the final review due to an open, ongoing investigation into broader jail practices. (Attorney General Bonta Launches Civil Rights Investigation into Riverside County Sheriff's Office (Feb. 23, 2023), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-launches-civil-rights-investigation-riverside-county> [announcing Riverside jail investigation].)

10 As a reminder, this investigation did not include review of Los Angeles County, Riverside County, or Santa Clara County. (See *supra* at footnote 1, 9.) And, Alpine County and Sierra County do not house jail inmates and thus do not have jail manuals.