

Lactation Rights While Incarcerated or in Immigration Detention

People who are incarcerated or detained by immigration while they are breastfeeding or lactating have the right to lactation accommodations during their incarceration or detention. These rights can be difficult to enforce, but there have been a number of cases in which a breastfeeding or lactating individual who was denied lactation accommodations was able to win accommodations through a combination of legal action and community support.

If an individual is incarcerated or in immigration detention and needs lactation accommodations, contact ACLU SoCal right away.

Incarceration

Community Based Alternatives to Incarceration

One option to explore in California is whether there is a community-based alternative to incarceration for those individuals who are pregnant, postpartum, lactating or parenting. The ACLU Report *Reproductive Health Behind Bars in California*⁵⁹ describes numerous health benefits to community-based alternatives to incarceration for both the incarcerated person and their child.

Contact ACLU SoCal for more information about community-based alternatives to incarceration.

Pregnancy While Incarcerated

California law provides protections for lactating individuals who are incarcerated as well as for pregnant people who are incarcerated.⁵⁶ The California legislature consider breastfeeding and medical conditions related to breastfeeding as part of the legal definition of the term “sex” under California law, which means discrimination on the basis of breastfeeding or related conditions is sex discrimination and is thus not permissible.⁶⁰

Reproduction Health Services During Incarceration

Incarcerated people have a constitutional right to appropriate medical care. In 2003 the American Public Health Association (APHA) released a list of Standards for Health Services in Correctional Institutions which includes best practices for reproductive health:⁶¹

1. A “sensitive and dignified” reproductive system examination as part of initial health screening
2. Prenatal screening tests
3. Prenatal health education
4. Special housing and diet when necessary
5. Identification and proper referral of high-risk pregnancies
6. Treatment to prevent perinatal transmission of HIV for HIV-positive women
7. Prohibition of shackling during labor and delivery
8. Training of healthcare staff in jails and prisons for labor and delivery in case of emergency
9. Standing arrangement for deliveries that allow a parent and infant to spend time together after birth
10. Ongoing access to newborns after delivery
11. Access to family planning services, including abortion counseling and services

Shackling of pregnant people poses a serious health risk to both the pregnant person and their pregnancy and is a violation of their human dignity and human rights. This practice is opposed by both the American Medical Association (AMA) and the American College of Obstetrics and Gynecology (ACOG). It is also illegal in the state of California.⁶²

California Law prohibits the use of shackles in both pregnant and laboring people.⁶² Pregnant people can never be shackled or restrained with leg irons, waist chains, or handcuffs behind the body. Laboring people cannot be shackled during transport to the hospital, during labor, birth, or recovery postpartum. Any restraints used on a pregnant person must be removed during a medical emergency when a medical professional in charge of the person's care determines that such removal is necessary. In other words, the doctor has the final say, not the deputy.⁶³

Lactation

Jails and prisons in California must provide lactation accommodations to incarcerated people who need them. Most often, this means giving the incarcerated person access to an electric breast pump. It is also best practice for facilities to allow for the expressed breast milk to be picked up by a designated family member from the facility for delivery to the child. For examples of model lactation policies, see attached lactation policies.⁶⁴

If an incarcerated person is not being accommodated or allowed to express breast milk, this could pose a serious medical risk to both the incarcerated person and to the infant. Mastitis, a breast infection, can occur in lactating people who are not able to frequently express breast milk. If the incarcerated person is forced to wean earlier than intended, artificial feeding also poses health risks to the infant. If a facility does not afford necessary lactation accommodations, the facility may be in violation of that person's constitutional rights by showing "deliberate indifference to [their] serious medical needs"⁶⁵ as well as California law, which prohibits "any lack of care whatever which would injure or impair the health of the prisoner, inmate, or person confined."

There are facilities in San Diego, Santa Fe Springs, Fresno, Bakersfield, and Pomona that allow children

younger than 6 to live with their incarcerated parents while they serve out their sentences. There are 16 beds at each facility and an application process. See citation for additional details about this program.⁶⁶

Recommendations if the facility does not provide appropriate lactation accommodations:⁶³

- Contact the ACLU and BreastfeedLA if the facility continues to refuse lactation accommodation.
- Request an electric breast pump, see model policies for how best to accommodate the lactating person.
- If an electric breast pump is unavailable request a manual hand pump.
- If the facility refuses to provide an electric or manual pump, the lactating person should be taught hand expression for immediate relief and to help prevent infections, while advocating for more appropriate accommodations.
- The lactating individual should be given a private place to express breast milk.
- Contact the sheriff's department or facility directly if the individual is not being accommodated.

Policy Recommendations for Jails and Prisons

We recommend that counties adopt the following policy, which includes lactation accommodation, for postpartum individuals. Citations to relevant law and recommendations of leading health organizations are below.

Incarcerated people recovering from labor and childbirth will receive appropriate medical care and accommodations. This care shall include:

- Assessing inmates who delivers a child vaginally to determine appropriate housing, and to begin their postpartum care, and admitting an individual who delivers via C-section to further in-patient care.⁶⁷
- Supervising obstetricians or RN/NPs should have discretion to determine when, postpartum, an inmate is cleared for housing in the general population.⁶⁷
- A postpartum examination six weeks after birth, wherein the supervising obstetrician or RN/NP will determine whether the inmate will be cleared, or if further medical restrictions are warranted.⁶⁷
- A screening for depression or mental stress during pregnancy and for postpartum depression after delivery, and treatment as needed.⁶⁹
- A bottom bunk during the postpartum period.⁶⁹
- A recovery period of at least 4-6 weeks after delivery before the inmate is required to resume normal activity.⁶⁹
- Access to a breast pump to express milk to relieve pain or maintain milk supply.⁶⁹
- Parents will be allowed time to connect with their infants after delivery, both in the hospital and later visitation.^{69,70}
- Inmates will be educated about the benefits of breastfeeding and the facility's policy is to encourage and support breastfeeding.⁶⁹
- Lactating inmates will be allowed to express milk to maintain milk supply and also for delivery to the infant.⁶⁹
- The facility will make accommodations for storing and transporting breast milk.⁶⁹



For more information please see the ACLU's recommendations in the report *Reproductive Health Care in California Jails - A Tool to Assess and Reform Policies and Practices*.⁷⁰

Pregnancy While in Immigration Detention

Immigration and Customs Enforcement (ICE) has published standards for medical care for women who are at ICE facilities including Service Processing Centers (SPCs), Contract Detention Facilities (CDFs) and “state or local government facilities used by ERO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.”

These standards include prohibiting shackling of pregnant women “absent truly extraordinary circumstances” including during transport to and from the hospital, labor and birth, both in the facility and in the hospital.⁷¹

Lactation While in Immigration Detention

ICE standards state that women who are in custody should have access to lactation services. ICE has also issued a memorandum “to exercise discretion during arrests by releasing nursing mothers from detention unless they presented a national security or public safety risk.” This memorandum was issued after public outcry following the case of a woman detained in Ohio who was nursing her 9-month-old baby.⁷²

The American Bar Association (ABA) recommends that ICE avoid detaining nursing mothers and that the unique needs of nursing mothers and “other vulnerable populations” be met while in immigration detention.⁷³

Recommendations if the facility does not provide appropriate lactation accommodations:

- Consult with an immigration attorney
- Contact the ACLU and BreastfeedLA if the facility continues to refuse lactation accommodation
- Request an electric breast pump, contact the ACLU for model policies for how best to accommodate the lactating person
- If an electric breast pump is unavailable request a manual hand pump
- If the facility refuses to provide an electric or manual pump, the lactating person should be taught hand expression for immediate relief and to help prevent infections, while advocating for more appropriate accommodations.
- The lactating individual should be given a private place to express breast milk.