

ASSEMBLY BILL

No. 923

Introduced by Assembly Member Quirk-Silva

February 19, 2025

An act to add Chapter 6 (commencing with Section 1565.1) to Title 12 of Part 2 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 923, as introduced, Quirk-Silva. Detention and incarceration of pregnant and postpartum defendants.

Existing law gives a judge discretion when deciding various matters in a criminal proceeding, including, among other things, issuing bail or releasing a defendant on their own recognizance, accepting a diversion or deferred entry of judgment agreement, and imposing sentences and granting probation.

This bill would, when a court is exercising its discretion with regard to these matters, make a rebuttable presumption against detention and incarceration of a pregnant or postpartum defendant, as defined, if the defendant provides the court and district attorney with notice of the defendant's status as a pregnant or postpartum defendant at each applicable stage of the proceedings. The bill would require a court that decides to detain or incarcerate a defendant after this consideration to make specific findings on the record that the risk to public safety or any other factor the court is required to consider is substantial enough to outweigh the risk of incarceration, as specified.

The bill would authorize a person who may be pregnant or postpartum and who is arrested or in custody in a county jail to request a pregnancy test upon or following admission to the county jail and would require the county jail to provide a pregnancy test upon request and allow the

person to take the pregnancy test within 24 hours after the request. The bill would require a county jail to keep a record of specified information, including the total number of incarcerated pregnant people at that county jail. By imposing additional duties on county jails, this bill would impose a state-mandated local program.

The bill would authorize a pregnant or postpartum defendant to request a stay of execution of their sentence by filing a written request to the court if the pregnant or postpartum defendant is detained or incarcerated in a county jail for any period of time through the end of the pregnancy or the postpartum period, except as specified. The bill would require the court to apply the rebuttable presumption above when considering whether to grant that stay of execution. The bill would authorize a court to order a stay of execution of the sentence for any period of time through the end of the pregnancy or the postpartum period.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) There is an increasing female population in prisons and jails.
- 4 (2) While no system is perfect in responding to the medical
- 5 conditions of pregnancy, correctional facilities and county jails
- 6 are particularly ill-equipped to do so.
- 7 (3) During a criminal case involving a pregnant or postpartum
- 8 defendant, the physical and mental health needs of the pregnant
- 9 defendant or the postpartum defendant and newborn must be
- 10 considered at all stages of the proceeding as a matter of community
- 11 health and safety.
- 12 (4) Timely attention to medical conditions and mental health
- 13 during the perinatal period can improve health and welfare for
- 14 multiple generations of a family unit.

1 (5) Pregnancy is a time-sensitive process that has many potential
2 outcomes and variations. A pregnant person may feel healthy and
3 experience no complications. A pregnant person may also
4 experience sudden, harmful medical conditions, such as
5 preeclampsia or placental abruption, or develop complex medical
6 conditions that result in the early termination of a pregnancy or
7 threaten the life of the pregnant person, such as an ectopic
8 pregnancy. At any stage of the perinatal period, a situation can
9 occur that causes long-term physical and mental health trauma for
10 the pregnant person.

11 (6) Criminal proceedings are not responsive to the timeline or
12 complexity of the perinatal period.

13 (7) When a substance use disorder intersects with a pregnancy,
14 it is best handled as a health condition. Increasing the time a
15 pregnant person with a substance use disorder is in a correctional
16 facility or county jail is counter to public health and may drive the
17 pregnant person away from medical care and support services.

18 (8) The end of the pregnancy does not immediately terminate
19 the effects of the pregnancy on the person who was pregnant.

20 (9) The postpartum period is an essential timeframe for both
21 the person who gave birth and the newborn. It is an opportunity
22 for the newborn to do both of the following:

23 (A) Develop healthy physiologic responses.

24 (B) Benefit from the attachment and bonding that occurs during
25 this period.

26 (10) Bonding between a newborn and parent during the
27 postpartum period can improve conditions for other children and
28 care providers in the same family unit and prevent child abuse and
29 neglect.

30 (11) Bonding between a newborn and a parent can improve the
31 overall health of the newborn and the parent and may prevent or
32 reduce long-term health risks that may be increased by separating
33 the newborn from the parent. For example:

34 (A) A postpartum person who does not breastfeed or chestfeed
35 a newborn may have an increased likelihood of premenopausal
36 breast cancer, ovarian cancer, or type 2 diabetes.

37 (B) A newborn who is not breastfed or chestfed may have an
38 increased likelihood of childhood obesity, asthma, type 1 or type
39 2 diabetes, leukemia, or sudden infant death syndrome.

(C) A child who is separated from any parent may experience stress hormones, which may lead to difficulty sleeping, developmental regression, heart disease, hypertension, obesity, diabetes, or decreased lifespan. A newborn who is separated from a parent may also experience permanent architectural changes in the brain, including a lower intelligence quotient or an increased likelihood of depression, suicidal ideation, or addiction to alcohol or gambling.

(b) The Legislature finds, therefore, that all alternatives to prosecution, commitment, and incarceration of a pregnant or postpartum person must be considered, including a stay of criminal proceedings or sentencing to reduce the likelihood of negative health and social outcomes for the parent, newborn child, and community.

(c) The Legislature declares that the definitions in Section 1565.1 of the Penal Code added by this act are from the federal Centers for Disease Control and Prevention and the National Institutes of Health.

SEC. 2. Chapter 6 (commencing with Section 1565.1) is added to Title 12 of Part 2 of the Penal Code, to read:

CHAPTER 6. CALIFORNIA WOMEN'S CARE ACT

1565.1. For the purposes of this chapter, the following definitions shall apply:

(a) "Newborn" means a person who has been born and who is less than one year of age.

(b) "Postpartum period" means a period of one year after the end of a pregnancy, regardless of whether the pregnancy ends with a live birth.

(c) "Pregnant or postpartum defendant" means a person who is pregnant or in a postpartum period who has been accused or convicted of a crime.

(d) "Stay of execution" means delaying the imposition of a sentence or the incarceration portion of the sentence for a pregnant or postpartum defendant after the sentence is announced by a court.

1565.2. (a) There is a rebuttable presumption against detention and incarceration of a pregnant or postpartum defendant if the defendant provides the court and district attorney with notice of the defendant's status as a pregnant or postpartum defendant at

1 each applicable stage of the proceedings. The court exercising its
2 discretion under law shall apply the rebuttable presumption
3 described in this subdivision to a pregnant or postpartum defendant
4 in determining whether to do any of the following:

5 (1) Issue bail or own recognizance release pursuant to Chapter
6 1 (commencing with Section 1268) of Title 10.

7 (2) Accept a diversion agreement.

8 (3) Accept or continue a deferred entry of judgment.

9 (4) Impose a sentence, including whether to grant probation.

10 (5) Grant a stay of execution pursuant to this chapter.

11 (b) A court shall not use a pregnant or postpartum defendant's
12 pregnancy or postpartum period as a basis for imposing a greater
13 restriction on the defendant's liberty than a similarly situated
14 defendant who is not pregnant or postpartum, including if a
15 pregnant or postpartum defendant has a substance use disorder.

16 (c) If the court decides to detain or incarcerate the pregnant or
17 postpartum defendant after weighing the applicable legal standards
18 and considerations set forth in this section, the court shall make
19 specific findings on the record that the risk to public safety or any
20 other factor the court is required to consider is substantial enough
21 to outweigh the risk of incarceration.

22 1565.3. (a) A person who may be pregnant or postpartum who
23 is arrested or in custody in a county jail may request a pregnancy
24 test upon or following admission to the county jail. Staff at the
25 county jail shall provide a pregnancy test upon request and allow
26 the person to take the pregnancy test within 24 hours after the
27 request.

28 (b) Requesting a pregnancy test, taking a pregnancy test, and
29 the results of a pregnancy test are confidential medical information.
30 This confidential medical information shall not be disclosed to
31 outside parties unless the information is required for the person to
32 receive medical care or to allow staff at the county jail to provide
33 necessary care.

34 (c) If a person is represented by an attorney in a criminal
35 proceeding and the county jail has a signed medical release from
36 the person, the county jail shall give notice to the person's attorney
37 within 48 hours, excluding state holidays and weekends, concerning
38 the person's request for a pregnancy test pursuant to subdivision
39 (a).

40 (d) A county jail shall keep a record of all of the following:

1 (1) The total number of incarcerated pregnant people at that
2 county jail.

3 (2) The total number of pregnant people who give birth while
4 incarcerated and whether the birth was a live birth or stillbirth.

5 (3) The gestational age and birth weight of each infant born
6 during a pregnant person's term of imprisonment.

7 (4) The total number of incarcerated pregnant people who
8 experience complications and the types of complications
9 experienced.

10 (5) The total number of incarcerated pregnant people who
11 experience miscarriages.

12 (6) The total number of incarcerated pregnant people who
13 declined deferred or alternative sentencing.

14 (7) The age of an incarcerated pregnant person when they gave
15 birth.

16 (8) The ethnicity of an incarcerated pregnant person who gave
17 birth.

18 (9) The type of crimes an incarcerated pregnant person is serving
19 a sentence for.

20 1565.4. (a) A pregnant or postpartum defendant may raise the
21 issue of the defendant's pregnancy or postpartum period at any
22 time during criminal proceedings or while serving a sentence. If
23 the pregnancy or postpartum period is raised, the pregnant or
24 postpartum defendant shall provide notice to the district attorney
25 by providing evidence of the pregnancy or the start of the
26 postpartum period with a limited waiver of privilege. A positive
27 pregnancy test or medical record confirming pregnancy or the end
28 of pregnancy, or a birth certificate of a newborn, is prima facie
29 evidence of pregnancy or the start of the postpartum period.

30 (b) If the prosecution contests that the defendant is pregnant or
31 in a postpartum state, the court shall hold a hearing to make a
32 determination as soon as practicable, but no later than 14 days
33 after the issue is raised, unless the defendant requests the hearing
34 be held later than 14 days after the issue is raised. If the defendant
35 requests a later hearing, the court shall make the determination
36 within the timeline requested. The court shall hold the hearing
37 immediately if the circumstances of the defendant or the
38 defendant's newborn require it. The defendant shall prove, by a
39 preponderance of the evidence, that the defendant is a pregnant or
40 postpartum defendant.

1 (c) The court shall protect medical information provided to the
2 court as confidential medical information. A defendant's waiver
3 of medical privilege to present medical evidence of pregnancy or
4 the end of a pregnancy in court is limited to information relevant
5 to determine whether the defendant is or was pregnant and whether
6 the pregnancy has ended.

7 1565.5. (a) A pregnant or postpartum defendant may request
8 a stay of execution by filing a written request to the court if the
9 pregnant or postpartum defendant is detained or incarcerated in a
10 county jail for any period of time through the end of the pregnancy
11 or the postpartum period.

12 (b) The court shall hold a hearing to determine the matter as
13 soon as practicable, but no later than 14 days after the pregnant or
14 postpartum defendant requests a stay of execution, unless the
15 pregnant or postpartum defendant requests a later hearing. If the
16 pregnant or postpartum defendant requests a later hearing, the
17 court shall make the determination within the timeline requested.
18 The court shall hold the hearing immediately if the circumstances
19 of the pregnant or postpartum defendant or newborn require it.
20 The defendant shall prove, by a preponderance of the evidence,
21 that the defendant is a pregnant or postpartum defendant.

22 (c) In ruling upon the pregnant or postpartum defendant's
23 request pursuant to subdivision (b) of this section, the court shall
24 apply the rebuttable presumption set forth in subdivision (a) of
25 Section 1565.2.

26 (d) The district attorney and the court shall comply with the
27 requirements of Section 28 of Article I of the California
28 Constitution in a proceeding conducted pursuant to this chapter.

29 (e) Following the hearing conducted pursuant to subdivision
30 (b), the court may order a stay of execution of the sentence for any
31 period of time through the end of the pregnancy or the postpartum
32 period. The court shall order a date, time, and place for the
33 defendant to appear to serve the sentence upon completion of the
34 stay of execution.

35 (f) If the court grants a stay of execution pursuant to subdivision
36 (e), the court shall order the bail and the conditions of the bail to
37 remain in effect until the date the pregnant or postpartum defendant
38 is ordered to start serving their sentence.

1 (g) Notwithstanding this section, a pregnant or postpartum
2 defendant who is ineligible for bail is not eligible for a stay of
3 execution.

4 (h) If the pregnant or postpartum defendant is charged with a
5 new violation or the court receives a verified motion from the
6 district attorney that establishes a prima facie case that the pregnant
7 or postpartum defendant has violated the conditions of the stay of
8 execution and presents a substantial risk to public safety, the court
9 shall set a hearing and require the pregnant or postpartum defendant
10 to appear. After the hearing, the court may end the stay of
11 execution, add new conditions, issue a warrant, or continue the
12 stay of execution.

13 SEC. 3. If the Commission on State Mandates determines that
14 this act contains costs mandated by the state, reimbursement to
15 local agencies and school districts for those costs shall be made
16 pursuant to Part 7 (commencing with Section 17500) of Division
17 4 of Title 2 of the Government Code.