



Northern
California

November 18, 2021

Via U.S. Mail and Electronic Mail

Tulare County Sheriff's Office
833 S. Akers St.
Visalia, CA 93277
sheriffpio@tularecounty.ca.gov

RE: Inadequate and Unlawful Prenatal Care in Tulare County Jails

Dear Sheriff Boudreaux,

I write on behalf of the American Civil Liberties Union of Northern California (“ACLU”) to express our deep concern over the severely inadequate and unlawful provision of prenatal care in the Tulare County jails. In the past year, we have heard from three pregnant woman incarcerated in the Tulare County jails who were unable to obtain critical medical services to which they were legally entitled, despite having been diagnosed with high-risk pregnancies. Submission of this information to the Tulare County Superior Court led in all three instances to the women being released to carry their pregnancies to term.

Failure to provide adequate prenatal care in your jails is an urgent and alarming matter. Particularly for pregnant people with high-risk pregnancies, the denial of access to necessary care could result in an untimely death—either of the pregnant person or their infant. For that reason, the Legislature in 2019 passed Assembly Bill 732 (“AB 732”), which imposes highly specific requirements on the care jails must provide pregnant people. Although it appears that you have modified your relevant policies subsequent to the enactment of this law, they do not go far enough. Nor do jail staff appear to be following even the existing policies, based on the experience of the three women we have worked with.

We now strongly urge you to take immediate action to (1) revise jail policies to comply fully with the CA Penal Code, and (2) train jail staff in how to follow the policies, to ensure that incarcerated people in the Tulare County jails have full access to prenatal care. **Please inform us within 10 days of receipt of this letter how you intend to proceed.** It is in the interest of all to resolve this on an informal basis without resort to formal proceedings.

I. Factual Background

Over the past year, we have worked with three women, all of whom were denied adequate prenatal care in Tulare County jails.

American Civil Liberties Foundation of Northern California

EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Farah Brelvi

SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111

FRESNO OFFICE: PO Box 188 Fresno, CA 93707 • SACRAMENTO METRO OFFICE: PO Box 189070 Sacramento, CA 95818
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

A. Alexandra Meza.

Ms. Meza was incarcerated starting October 19, 2020 at the Tulare County Sheriff's Office, Bob Wiley Detention Facility (the "Jail") in Visalia, California.

Ms. Meza suffered from a condition called placenta previa¹ and from gestational diabetes. At the time of her incarceration, she was at risk of an emergency C-section and early delivery. While incarcerated Ms. Meza was seen infrequently by medical providers and was never connected to the two specialists she was referred to by her obstetrician. On February 9, 2021, Alexandra was finally taken to the hospital after three days of continuous bleeding. On this visit to the Jail nurse, she was also told that she could no longer see her doctor because his contract with the Jail ended. While at the hospital she requested an ultrasound to check on her placenta previa, as directed by her doctor but again, was refused.

On March 5, 2021 Ms. Meza was released because the judge found she was not a threat to society and so that she could access much needed medical treatment. After her release, Ms. Meza was able to obtain the care that she and her infant needed, including a litany of tests for her baby. Ms. Meza gave birth to her son on May 24, 2021, and she was able to obtain postpartum support due to complication her infant had developed while incarcerated. She has also been able to breast feed her son and reengage with her community by enrolling in parenting classes and by obtaining employment. Ms. Meza also enrolled in the Institute of Impacted Leaders at Initiate Justice a 12-week organizing training program that aims to give formerly incarcerated people the skills that they need to advocate for change. Ms. Meza has completed the program and hopes to continue to apply the skills she has learned in her future work.

B. Janielle Ausherman

On January 17, 2021, Ms. Ausherman was incarcerated at the Jail, while suffering from a high-risk pregnancy. On February 5, 2021, Ms. Ausherman had her first visit appointment with an obstetrician. At the appointment she obtained an ultrasound and a referral to a maternal fetal specialist. Ms. Ausherman was informed that she had serious complications with her pregnancy, that she would need to deliver early via C-section, and that she was at risk for a number of emergency pregnancy conditions, including superimposed preeclampsia² and placental abruption.³

¹ Placenta previa is a problem of pregnancy in which the placenta grows in the lowest part of the womb (uterus) and covers all or part of the opening to the cervix. U.S Nat. Library of Med., MedlinePlus, *Placenta Previa*, <https://medlineplus.gov/ency/article/000900.htm> (last visited September 28, 2021).

² Preeclampsia is a pregnancy complication characterized by high blood pressure and signs of damage to another organ system. Left untreated, preeclampsia can lead to serious—even fatal—complications for the pregnant person and their baby. Mayo Foundation for Medical Education and Research, *Preeclampsia-Symptoms and Causes*, <https://www.mayoclinic.org/diseases-conditions/preeclampsia/symptoms-causes/syc-20355745> (last visited September 28, 2021).

³ Placental abruption is the early separation of the placenta from the lining of the uterus before the completion of the second stage of labor. It is one of the causes of bleeding during the second half of pregnancy and is a relatively rare but serious complication of pregnancy that places the well-being of both mother and fetus at risk. Pamela Schmidt, Christy L. Skelly, Deborah A. Raines, *Placental Abruption*, National

Despite this diagnosis and despite her requests to see an obstetrician more frequently, Ms. Ausherman's obstetricians only saw her intermittently. After complaining to the Jail of elevated blood pressure for four days, Ms. Ausherman was finally able to see a doctor on February 24, 2021, when she arrived at the hospital for a routine medical exam. Worse, a Sheriff's Deputy delayed in calling an ambulance when Ms. Ausherman's blood pressure skyrocketed during the visit. When Ms. Ausherman finally arrived at the hospital, the ER doctor told her that she should have arrived there much sooner, and she was forced to spend 24 hours in the ER until her condition stabilized. Once again, Ms. Ausherman was referred to a maternal fetal specialist, with an urgent request that the appointment occur within one week. The appointment was never made, and Ms. Ausherman was not able to see a specialist at any point during her incarceration. It then took the Jail almost a month to provide her with the high blood pressure medication she had been prescribed in the ER. And it took the Jail nearly four months and two prescriptions from two different doctors to provide Ms. Ausherman with a medical belt, designed to lessen the risk of placental abruption.

Having previously lost her second child to placental abruption, Ms. Ausherman was terrified that she would lose this baby—and that due to her very real risk of blood loss, she might die as well. In declarations, her obstetricians affirmed both the high-risk nature of Ms. Ausherman's pregnancy and her concern that she would not get adequate care. Ms. Ausherman's fetus also suffered from a fetal abnormality called hydronephrosis.⁴ The doctors attested that as her pregnancy progressed, J.A. would need weekly fetal monitoring, which they had no confidence the Jail would provide.

Based on this information, the Tulare County Superior Court on April 9, 2021, released J.A. under a request for medical care by her defense attorney. Out of the Jail, Ms. Ausherman was able to access the prenatal care she needed, and she gave birth to a healthy infant on May 25, 2021.

C. J. A.

J.A. was incarcerated at the Jail while pregnant and suffering from severe complications. J.A.'s obstetrician diagnosed her with placenta previa and gestational diabetes. J.A. also suffered from early contractions and swelling in her legs. J.A.'s doctor was very concerned and believed that she also had either a heart condition or kidney problems. She was ordered to see a maternal fetal medicine specialist every other week to monitor her delivery date. The Jail failed to provide J.A. with any of the treatment that her doctor ordered, including access to a low sodium diet and emergency medical treatment. She was never able to see the maternal specialist that her doctor recommended while incarcerated and at one point was so severely swollen that she lost the ability to walk.

J.A. was released from the Jail on February 24, 2021, under a medical emergency care modification hearing. When she was released, she was able to meet with a doctor who gave her a progesterone shot to prevent early delivery. She was able to obtain a low sodium diet and her swelling significantly lessened and she no longer had trouble walking. She also met with her obstetrician every week for

Center for Biotechnology Information, U.S Nat. Library of Med.,
<https://www.ncbi.nlm.nih.gov/books/NBK482335/> (last visited September 28, 2021).

⁴ Hydronephrosis is swelling of one of both kidneys. Left untreated, severe hydronephrosis can lead to permanent kidney damage. Mayo Foundation for Medical Education and Research, Hydronephrosis, <https://www.mayoclinic.org/diseases-conditions/hydronephrosis/cdc-20397563> (last visited September 28, 2021).

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regular checkups and consistent progesterone shots. The delay in obtaining these critical medical services put J.A and her baby in grave danger. She is now able to eat healthy foods and to bond with her children.

D. Access to Menstrual Hygienic Products

On October 22, 2021, the ACLU of Northern CA was informed that two women were refused access to menstrual hygiene products at the Jail in Tulare County. This news arrives with increased concern over the status of menstruating people in the Jail. Menstrual hygienic products are not only of critical importance for health and well-being but also required by law for the Jail to provide. We again, ask that the county abide by its own policies and provide critical care for people kept in Jail facilities.

II. Legal Analysis

The law is clear that jails in California have a statutory and constitutional obligation to provide patients with adequate prenatal care and menstrual hygiene products. Yet the Tulare County jails plainly failed to meet this minimum obligation here.

Under AB 732, which went into effect in January 2021, jails in California are required to comply with highly specific statutory requirements to ensure that incarcerated pregnant persons receive timely and adequate prenatal care and postpartum support. *See* Cal. Penal Code § 4023 *et seq.* CA Penal Code entitles incarcerated pregnant, postpartum, and menstruating people to dignified healthcare conditions. This includes full access to menstrual products⁵, family planning services⁶, and voluntary pregnancy testing.⁷ Most importantly, and to ensure the safety and livelihood of the pregnant people, AB 732 expands health care provider options⁸, a requirement to provide options counseling by a health care provider trained in reproductive healthcare⁹ and regular prenatal visits.

If an incarcerated person is confirmed to be pregnant, then the jail must ensure that they are scheduled for a pregnancy examination by a physician, nurse practitioner, certified nurse midwife, or physician assistant within 7 days of their arrival at the jail. At a minimum, the pregnancy examination must include: (1) a determination of the gestational age of the pregnancy and the estimated due date, (2) a plan of care, and (3) if needed, the ordering of prenatal lab and diagnostic studies.¹⁰ With respect to prenatal doctors' visits the law provides as follows:

Incarcerated pregnant persons shall be scheduled for prenatal care visits in accordance with medical standards outlined in the most current edition of Guidelines for Perinatal Care developed by the American Academy of

⁵ Cal. Penal Code § 4023 *et seq.*

⁶ Cal. Penal Code § 4023.5(c), as amended by AB 732.

⁷ Cal. Penal Code § 4023.8(a).

⁸ Cal. Penal Code § 4023.6(a), as amended by AB 732.

⁹ Cal. Penal Code § 4023.8(b).

¹⁰ Cal. Penal Code § 4023.8(d)(1)-(3).

Pediatrics (AAP) and the American College of Obstetricians and Gynecologists (ACOG) Committee on Obstetric Practice, unless more frequent visits are indicated by the physician, nurse practitioner, certified nurse midwife, or physician assistant. Cal. Penal Code § 4023(e).

These guidelines recognize that “[t]he frequency of obstetric visits should be individualized. Women with poor pregnancy outcomes in earlier pregnancies, known medical problems . . . should be seen as early as possible.” And “the appropriate intervals between scheduled visits are determined by the nature and severity of the problems.”¹¹ All of the conditions found by doctors in the three ACLU clients—prior preterm delivery, hypertension, pregestational diabetes, and psychiatric illness—are listed in the guidelines under “early pregnancy risk.”

The Tulare County Sheriff’s Office (“TCSO”) and Wellpath—the private healthcare contractor for the Jail—failed to provide treatment to Ms. Meza, Ms. Ausherman and J.A. within the mandated treatment timeframes.¹² One of the key requirements under ACOG guidelines is to schedule the necessary number of appointments including, specialists’ appointments, for all incarcerated pregnant people. The failure to comply with the appropriate timeframes, prevented the doctors’ ability to treat their respective patients appropriately and within their full professional capacity and care. In declarations from Dr. Pang and Dr. Bordberg, both expressed that they could only see their patients at monthly intervals and that they had no control over scheduling follow up appointments. Ms. Ausherman and J.A. for example, were not able to see their OBGYN for an initial visit until at least a month of incarceration. Similarly, Ms. Meza was not able to see their OBGYN for at least a month after the initial visit.

Second, TCSO and Wellpath fail to provide mandated family planning services and social worker support. There is no indication that any of the above-mentioned parties received information or accommodations which would allow for them to develop a birth plan or social worker support.

Lastly, the health and safety risks that J.A., Ms. Meza, and Ms. Ausherman experienced, violated their constitutional right to be free from cruel and unusual punishment.¹³ As in the case of Ciera Stoelting¹⁴, who lost her child while under the custody of Orange County Jails, these individuals all faced serious risks of early delivery. The court in the *Stoelting* case found that after numerous requests for medical care, “Stoelting began giving birth while sitting on the toilet inside the infirmary cell. Despite her requests for medical assistance [...] jail staff ‘egregiously sat by and watched while Stoelting finished laboring and delivering’ the baby.” The lack of prenatal care was not only beyond the punishment that is permissible under the federal constitution, but demonstrated a

¹¹ American Academy of Pediatrics (2017), *Guidelines for Perinatal Care*, 8th ed., available at: <https://www.acog.org/clinical-information/physician-faqs/-/media/3a22e153b67446a6b31fb051e469187c.ashx> (last accessed September 28, 2021).

¹² Every four weeks up to 24-28 weeks, every two weeks from then to 36 weeks, and every week from 36 weeks to delivery. *Id.*

¹³ U.S. Const. amend. XVIII.

¹⁴ Sean Emery, *OC supervisors approve \$1.5 million settlement for woman who lost baby in childbirth at jail*, ORANGE CTY. REG. (September 28, 2021, 2:00 PM), <https://www.oregister.com/2021/04/27/o-c-supervisors-ok-1-5-million-settlement-with-woman-whose-baby-died-at-childbirth-in-jail/>

deliberate indifference to the care of pregnant people in its refusal to provide for critical medical needs.¹⁵

III. TCSO's Existing Policy Regarding the Pregnancy Care

From documents the ACLU received through a Public Records Act request on April 26, 2021, it is clear that TCSO (via Wellpath) updated its policies to reflect the enactment of AB 732. Although updated policies begin the process of implementation, it is clear that Jail staff are not being trained on the policies, and the policies themselves continues to fall short in protecting the lives of pregnant people and their children.

For example, the policies correctly state that OBGYN specialists have control over treatment planning for incarcerated patients and those incarcerated persons shall be scheduled for prenatal visits in accordance with medical standards outlined in the most current edition of Guidelines for Perinatal Care developed by the American Academy of Pediatrics (AAP) and American College of Obstetricians and Gynecologists (ACOG), unless more frequent visits are indicated by the physician. Yet Jail staff did not follow the treatment plans issued by our clients' OBGYN specialists.

What the policies should do is include specific timeframes for when pregnant people should see their doctors when experiencing high risk pregnancies. The policies generally provide that prenatal care appointments occur every 1-2 weeks during the first two trimesters and weekly after 28-30 weeks of gestation—but these timeframes are for all patient, thereby differing from the ACOG recommendations which specifically require more appointments for patients with high-risk pregnancies. Additionally, the policies blame high-risk pregnancies on the “unhealthy lifestyle choices prior to incarceration,” even though that is not the case for many pregnant people.

Also absent from the policies are the following legal requirements: (1) that all incarcerated pregnant persons or persons who give birth during incarceration are entitled to notice, access to, and written application for, community-based programs for pregnant, birthing, or lactating incarcerated persons;¹⁶ (2) that every incarcerated pregnant person must be referred to a social worker to discuss options regarding feeding, placement, and care of the child after birth;¹⁷ (3) that all incarcerated pregnant persons must have access to daily prenatal vitamins and adequate diet in accordance with medical standards of care;¹⁸ (4) that all incarcerated pregnant persons who are housed in a multitier housing unit must be assigned to a lower bunk and lower tier housing;¹⁹ (5) that all incarcerated pregnant persons have the right to have a support person present during labor, childbirth, and postpartum recovery in the hospital;²⁰ and (6) all incarcerated persons who delivery a baby and

¹⁵ *Steel v. Alameda Cty.*, 428 F. Supp. 3d 235, 244(N.D. Cal. 2019).

¹⁶ Cal. Penal Code § 4023.8(j).

¹⁷ Cal. Penal Code § 4023.8(k)(1)-(3).

¹⁸ Cal. Penal Code § 4023.8(f)(1).

¹⁹ Cal. Penal Code § 4023.8(g).

²⁰ Cal. Penal Code § 4023.8(m).

return to the jail are entitled to a postpartum examination within one week from delivery and as needed for up to twelve weeks.²¹

We ask that all Jail policies be updated to reflect the full scope of California law, the plain intent of which is to provide pregnant and menstruating persons incarcerated in California jails with dignified and medically necessary services. In addition, all staff at TCSO and Wellpath should undergo trainings on both the law and Jail policies.

IV. Next Steps

We hope that the TCSO shares our goal of ensuring that pregnant, postpartum, and menstruating persons receive the care they need to protect their health with dignity. **Please inform us within 10 days of receipt of this letter how you intend to proceed.** It is in the interest of all to resolve this on an informal basis without resort to formal proceedings.

If there are any questions or concerns regarding the issues raised in our letter, please feel free to contact me at fperezaucar@aclu.org. I look forward to reviewing your response.

Sincerely,



Faride Perez Aucar
Staff Attorney

Gender, Sexuality and Reproductive Justice

ACLU Foundation of Northern California

²¹ The American College of Obstetricians and Gynecologists (2021), *Optimizing Postpartum Care*, Committee Opinion Number 736, available at <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2018/05/optimizing-postpartum-care>.

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