

KERN COUNTY SHERIFF'S OFFICE

Detentions Bureau Policies and Procedures

TITLE: PREGNANT OR POSTPARTUM INCARCERATED PEOPLE H-100

EFFECTIVE:	REVIEWED:	REVISED:	UPDATED:
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REFERENCE: Yeager v. County of Kern (Case #CV-F-87-493);
Penal Code 4023.8; DBPPM C-300, C-400, E-500, H-200, I-200

POLICY

It shall be the policy of the Kern County Sheriff's Office that all of the terms and conditions listed in the final settlement agreement in the case of Yeager v. County of Kern (Case #CV-F-87-493) will be fully implemented and will be strictly enforced by all staff members.

Section Managers will be responsible for ensuring that their personnel are properly trained in these policies and procedures.

All personnel assigned to the Sheriff's Detentions Facilities shall adhere to the policies and procedures involving the confinement of class members identified as being either pregnant or postpartum.

DEFINITIONS:

Pregnant Incarcerated Person: Includes any female incarcerated person who is currently confirmed to have a baby or babies developing inside her body or who states she is, or appears to be pregnant or postpartum, and any woman who states she is unsure of her pregnancy status.

Postpartum Incarcerated Person: For the purposes of the pregnancy regimen, shall be defined as three (3) months or less from having given birth, miscarried, or aborted.

For the purposes of medical assessment and treatment, specifically including psychological assessment and counseling, "Postpartum" shall be defined as one (1) year or less from having given birth, miscarried, or aborted.

BACKGROUND

On September 2, 1987, Plaintiffs (pregnant and postpartum women in the custody of the County of Kern) filed the Complaint in this lawsuit, Case #CV-F-87-493 (the "Complaint", in the United States District Court, Eastern District of California, alleging, among other things, that they had been deprived of adequate prenatal, postnatal and emergency medical and other care by Defendants (County of Kern, et al.), all in violation of the Eighth and Fourteenth Amendments to the United States Constitution, and of Section 1983 of Title 42 of the United States Code. The Complaint sought declaratory and injunctive relief. Defendants answered the Complaint on or about September 28, 1987, denying the material allegations therein. On March 28, 1989, a Stipulated Order was entered certifying the action as a class action as defined.

On or about July 19, 1989, Plaintiff Class and Defendants agreed, subject to the Court's approval, to settle this lawsuit upon the terms and conditions set forth in the Final Settlement Agreement.

On October 2, 1989, the Court held it's hearing to approve the proposed settlement. With no substantive objections, the settlement was approved as fair and equitable with an effective date of December 1, 1989.

DIRECTIVE #1

The following provisions shall be adhered to at all times:

- A notice of class action and hearing on proposed settlement described in the settlement as attachment "C" shall be posted in each female incarcerated person housing unit. Periodic checks by staff shall ensure that the notice is intact and available to class members and other interested incarcerated people.
- In accordance with this settlement, a "care plan" shall be established by the responsible physician. This care plan shall provide for each class member, among other things, future medical appointments, all necessary care, exercise, diet and vitamins. Detentions staff shall fully comply with the care plan provided by medical staff.
- Questions involving the propriety of such a plan relative to security or other important issues shall be brought to the attention of supervisory personnel who will in turn contact the section manager for clarification or resolution. Under no circumstance shall sworn or civilian staff maliciously interfere with the care plan provided. The care plan shall be carried out in a timely manner as long as the class member remains in the custody of the Sheriff.

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- Personnel assigned to the Sheriff's Detentions Facilities shall be periodically trained and knowledgeable in emergency procedures involving pregnancy complications and emergency situations.
- At all times, class members shall have access to security and medical personnel who have responsibility for initiating the emergency and other protocols.
- Detentions staff shall provide to any incarcerated person who states that she is unsure of her status or states she is pregnant or postpartum and within four (4) hours of her statement, a pink wrist band.
- Detentions staff shall provide each class member with the pregnancy diet beginning with the next scheduled mealtime, vitamin regimen, housing, exercise, education and medical treatment program required for class members. The "pregnancy regimen" for each class member will be provided by medical staff and shall continue for each and every class member for so long as the class member is incarcerated and until the responsible physician orders otherwise.

DIRECTIVE #2

Pursuant to Penal Code Section 4023.8(m), a pregnant incarcerated person may elect to have a support person present during labor, childbirth, and during postpartum recovery while hospitalized. The support person may be an approved visitor or the jail's staff designated to assist with prenatal care, labor, childbirth, lactation, and postpartum care.

- Any request by an incarcerated person for such a support person will be forwarded to the shift supervisor, who will coordinate with medical staff to facilitate the attendance of the support person.
- If the request is for a visitor to serve as the support person, the shift supervisor will approve or deny the visitor as detailed in Section E-500 of this manual. If the request is denied, the supervisor will document the reason in a JMS incident.

Note: For the purpose of a visitor serving as a support person as described above, the incarcerated person does not need to be hospitalized for more than ten days in order for such a visitor to be approved and the support person may attend outside of regular hospital visiting hours, if allowed by the hospital.

- If the incarcerated person requests jail staff to serve as the support person or the requested support person is denied approval to visit the incarcerated person in labor, the shift supervisor will coordinate with medical staff to send the appropriate medical personnel the hospital to serve as the support person.

Directive # 3

Penal Code Section 4023.8(h) strictly prohibits the use of a TASER, Oleoresin Capsicum (pepper spray), or exposures to other chemical weapons on an “incarcerated” pregnant female. Sheriff’s Office policy extends this prohibition to include the Electronic Immobilization Shield (or Stun Shield).

- Reference **Chapter F** of the Sheriff’s Office Policy and Procedures Manual and **Chapter O** of this manual for specific information on these force options.
- Incarcerated people identified by medical staff as being pregnant will be issued a **pink shirt** and pants of the color designated for the facility in which the incarcerated person is housed. The issuance of a pink shirt to pregnant incarcerated people is to clearly identify them to staff during a situation in which the use of force may be required (see Section D-400 of this manual).

Compliance Assurance

All staff shall provide prompt assistance to any person designated as a court appointed Compliance Assessor in matters relative to this Agreement. The Compliance Assessor shall be allowed admittance into the Sheriff’s Detentions Facilities at all times and can be identified by an I.D. tag bearing the title, “Compliance Assessor” and photograph affixed to the identification.

Under no circumstances shall there be any retaliation against class members subject to this agreement.

Section Manager Responsibilities

The Section Manager shall:

- Diligently attempt to ensure compliance with the terms of this agreement by all of their employees and all independent contractors performing work for the Sheriff’s Office.
- Ensure that all employees are trained to effectively carry out the provisions of the agreement.
- Take the appropriate steps to ensure that prenatal care and family planning information and education is provided to class members housed in the Sheriff’s Detentions Facilities in accordance with the provisions set forth in the agreement

- Ensure that staff under their span of control are generally aware of the terms of this agreement.
- Review and attempt to resolve all individual complaints and grievances when they are received in accordance with the agreement and Section I-200 (Incarcerated Person Grievances) of this manual.
- Be responsible for reporting to the Compliance Assessor the outcome of any complaint relating to Yeager v. County of Kern issues initiated by class members.

Shift Supervisor Responsibilities

The Shift Supervisor shall:

- Ensure that the terms of the agreement are understood by staff under their direct supervision, including civilian and contract employees and that the conditions set forth in the agreement and the policies involving this case are carried out by subordinate staff;
- Be responsible for staff training as directed by the section manager;
- Review and attempt to resolve all individual complaints and grievances when they are received in accordance with the agreement and Detentions Bureau Policy and Procedure, Section I-200 (Incarcerated Person Grievances).

Staff Responsibilities

Whenever a class member states that she is experiencing complications in pregnancy, staff will ensure that the incarcerated person receives appropriate care by the medical staff. Active labor is to be treated as an emergency. Once staff becomes aware of an incarcerated person in active labor, they shall immediately contact medical personnel on duty.

Detentions staff shall treat postpartum class members who have medically significant symptoms, or who are having complications or a medical emergency following birth as an emergency. In the event a class member states that she is experiencing complications resulting from an abortion or miscarriage, staff will ensure that the incarcerated person receives care by medical staff.

Pursuant to Penal Code Section 4023.8(l), staff will treat an incarcerated person in labor or presumed to be in labor as an emergency. The incarcerated person will be transported to a hospital as directed by medical staff.

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Staff shall provide a pink band to any female incarcerated person who states that she is unsure of her status or states she is pregnant or postpartum. The pink bands may be removed upon notification by medical staff that the incarcerated person is no longer included in this class.

Staff shall transport class members to all medical appointments in a timely manner.

Detentions staff shall ensure that class members have access to at least 32 ounces of milk or nutritionally equivalent milk products per day. Milk products will be made available during the mealtime; however, any disruption in this provision shall be immediately brought to the attention of the on-duty food service staff and Shift Supervisor so that the problem can be quickly resolved.

Detentions staff shall ensure that class members receive night snacks as ordered by medical staff. Conflicts relative to who should receive night snacks shall be immediately brought to the attention of the medical staff. In the event that a situation occurs where verification cannot be made, staff shall supply the night snack until verification can be made at a later time.

Class members have the right to refuse medication; however, refusals shall be documented as outlined in Section H-200 (Refusal of Medical, Dental and Mental Health Care) of this manual.

Detentions staff shall make available an interview room for private consultation between the compliance assessor and class members.

Detentions staff will provide all class members with a bottom bunk. Additionally, staff shall monitor bed assignments to ensure that class members are not displaced from their assigned bottom bunk.

- Pursuant to Penal Code Section 4023.8(g), staff will ensure that pregnant incarcerated people assigned to a multitier housing unit are assigned a **bottom bunk on a bottom tier**.

Upon notification by medical staff that an incarcerated person is no longer considered a class member, Detentions staff may re-assign the incarcerated person to an upper bunk if necessary to ensure availability of bottom bunks for class members.

Class members shall be restrained in accordance with Sections C-300 (Restraints – Protection of Incarcerated Person or Staff) and C-400 (Restraints – Security of Incarcerated People) of this manual.

Procedure A: General Duties with Regard to Class Members

DIRECTIVE A-1

The treatment and handling of class members requires different accommodations than non-class member incarcerated people receive. The following is a list of responsibilities the Housing Deputy and Search and Escort Deputy will perform when dealing with class members.

The IRC/Receiving Deputy will:

- Ask all new arrival female incarcerated people if any are pregnant or postpartum;
- Apply a pink band on all class members;
- Check with medical staff to see if a pregnancy test has been done;
- Notify laundry if class members request thermals;
- Instruct the incarcerated people on location of Yeager settlement posting;
- Instruct class members on their ability to refuse medical care (including prenatal care) in accordance with Section H-200 of this manual.

The Housing Deputy will:

- Dress out all incoming class member female incarcerated people in pink clothing once they are assigned a housing location;
- Make sure each class member is assigned a bottom bunk;
 - If a pregnant incarcerated person is housed in a multitier housing unit, ensure the incarcerated person is placed in a bottom bunk on a bottom tier (P.C. 4023.8(g))
- Change the count sheet to reflect each class member's location;
- On each class member's station card, highlight their name and location with a pink highlighter to identify the incarcerated person as either pregnant or postpartum;
- Fill out medical refusal form in the event that a class member opts to refuse any pregnant or postpartum care or treatment;

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- Ensure that each class member either participates or signs a refusal form for the exercise yard, each meal, PM snack and health education class;
- Immediately forward all medical refusal forms to medical staff;
- If a female Search and Escort Deputy is not available to immediately forward any refusal forms, the female Housing Deputy will perform both duties.

If a class member is administratively separated or placed in disciplinary isolation, the Housing Deputy will:

- Ensure the class member receives any PM snack as prescribed by medical staff;
- Ensure the class member is provided a minimum of three (3) hours per week of exercise time and daily access to a walking area;
- Ensure the class member is closely monitored and ensure medical and/or mental health referrals are provided upon request or as needed.

ADDENDUM – Summary of the settlement terms

Pursuant to the terms of this settlement agreement, Defendants (County of Kern, et al.) promise to take all such action as is necessary to assure that pregnant and postpartum women receive the following medical and other care, and conditions while confined in the Kern County Jails:

At all times while in jail, pregnant and postpartum women who require immediate medical attention, including attention for drug or alcohol treatment or withdrawal, have the right to an immediate referral to a health care provider. A health care provider can be any number of medical professionals, including doctors and nurses.

Each woman incarcerated person who states that she is pregnant, or unsure if she is pregnant, and each woman incarcerated person who has had a baby, miscarriage or an abortion within one (1) year of her entry into the jail, has the right to a medical assessment, screening, evaluation, examination, and treatment by medical staff while she is in jail according to the following schedule:

1. A question and answer screening by a medical provider is required to occur within two (2) hours of booking.
2. Within forty-eight (48) hours of booking, a health care provider shall do a more detailed medical review.

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3. Examinations by a physician shall occur at different times, depending upon the duration of pregnancy - if twenty-six (26) weeks or further advanced, within one (1) week; three (3) to six (6) months, within two (2) weeks; if three (3) months pregnant or less, within one (1) month of booking.
4. An examination schedule and care plan shall be set at the initial physician's examination and shall be followed.
5. Missed appointments shall be rescheduled to occur within two (2) weeks or sooner.
6. A woman in labor shall be supervised by a health care provider at the jail throughout labor or until she is transported to Kern Medical.
7. Postpartum women shall be examined by a physician within two (2) to six (6) weeks after delivery, abortion or miscarriage.
8. Women incarcerated people are entitled to abortions, unless medically or legally impermissible, and counseling.
9. Pregnant and postpartum women shall not be housed with incarcerated people who have communicable diseases.
10. Pregnant and postpartum women shall receive a nutritionally adequate diet and vitamin supplements.
11. Jail sanitation shall be adequate.
12. Pregnant and postpartum women shall be housed in bottom bunks.
13. There shall be monthly classes on various topics, including family planning, prenatal care, child birth preparation, parenting, abortion, nutrition, exercise, and general prenatal care. Pregnant and postpartum women shall be permitted to attend the classes.
14. Pregnant and postpartum women are entitled to receive clean underwear frequently, and to receive personal hygiene products and toilet paper as needed.
15. Pregnant and postpartum women shall receive the opportunity to walk daily and exercise three (3) hours per week of exercise time. Leg restraints may be used in some circumstances.

Note: The restraint stipulations contained in item number 15 are included in this policy as a result of the Yeager v. County of Kern settlement agreement issued in 1989. Subsequently, laws regarding the restraint of pregnant and postpartum incarcerated people have changed. Refer to **Section C-400** (Restraints – Security of Incarcerated People) of this manual for approved methods of restraining pregnant and postpartum incarcerated people.

16. Any physical restraints used on pregnant women shall be the least restrictive possible under the circumstances. Leg restraints will not be placed on visibly pregnant women, without the Shift Supervisor's approval. Visibly pregnant women shall not be handcuffed to other incarcerated people who are wearing leg restraints. Handcuffs will be in the front if used. Pregnant women shall not be transported in waist chains unless they are documented to be extreme security risks.

Note: The restraint stipulations contained in item number 16 are included in this policy as a result of the Yeager v. County of Kern settlement agreement issued in 1989. Subsequently, laws regarding the restraint of pregnant and postpartum incarcerated people have changed. Refer to **Section C-400** (Restraints – Security of Incarcerated People) for approved methods of restraining pregnant and postpartum incarcerated people.

17. Pregnant and postpartum women shall not be confined in isolation unless there are strong security considerations. Pregnant women who are isolated shall be examined by a health care provider within one (1) hour of the isolation and regularly afterwards. Frequent psychological counseling must be available to isolated pregnant and postpartum women.

This information is only a summary of the settlement agreement.