

HOUSE No. 2371

The Commonwealth of Massachusetts

PRESENTED BY:

Jay D. Livingstone and Kay Khan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to provide reproductive health care to incarcerated individuals.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>1/19/2023</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/19/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>1/19/2023</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>1/19/2023</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>1/27/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>2/13/2023</i>

HOUSE No. 2371

By Representatives Livingstone of Boston and Khan of Newton, a petition (accompanied by bill, House, No. 2371) of Jay D. Livingstone, Kay Khan and others for legislation to provide reproductive health care to incarcerated individuals. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act to provide reproductive health care to incarcerated individuals.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 127 of the General Laws, as appearing in the 2020 Official Edition,
2 is hereby amended by inserting after section 169 the following section:-

3 Section 170. As used in this chapter, the following words shall have the following
4 meanings unless the context clearly requires otherwise:

5 “Contraceptive services,” contraceptive counseling and initiation, continuation,
6 surveillance, and discontinuation of contraceptive methods.

7 “Reversible birth control methods,” includes birth control methods other than
8 sterilization, including but not limited to, intrauterine devices, the contraceptive implant,
9 injectable medroxyprogesterone, combined oral contraceptive pills, progestin-only contraceptive
10 pills, contraceptive patches, vaginal contraceptive rings, diaphragms, cervical caps, contraceptive
11 sponges, internal and external condoms, and spermicides.

12 “Emergency contraception,” birth control methods that are used to prevent pregnancy
13 after sexual intercourse.

14 “Nonprescription birth control methods,” birth control methods available without a
15 prescription from a health care provider, including but not limited to internal and external
16 condoms, spermicides, fertility awareness-based methods, and certain emergency contraceptive
17 methods.

18 “Long-acting reversible contraception (LARC),” birth control methods that provide
19 contraception for a prolonged period of time without user action, including intrauterine devices
20 and the contraceptive implant.

21 “Undue barriers,” processes or procedures that are not in line with standards of medical
22 care and that would cause significant expense or difficulty if carried out, including but not
23 limited to barriers to transportation to appropriate clinical services, unreasonably delaying access
24 to care, disclosure of personal information to correctional facility staff, and without requiring
25 disclosure of personal information beyond what is medically necessary to safely prescribe
26 contraceptives.

27 Contraceptive services shall be made available to incarcerated persons who are capable of
28 becoming pregnant at the following times: 1) upon admission to a correctional facility, 2) within
29 a minimum of 60 days prior to a scheduled release date, and 3) at any time upon request.

30 Any incarcerated person capable of pregnancy shall have access to all reversible birth
31 control methods and emergency contraception approved by the United States Food and Drug
32 Administration (FDA) for which they are medically eligible as determined by the United States
33 Medical Eligibility Criteria (US MEC) for Contraceptive Use set forth by the Centers for Disease

34 Control and Prevention. A medical or mental health diagnosis shall not be a requirement to
35 access birth control methods. A pelvic examination shall not be required to start, continue, or
36 stop birth control, except at the time of insertion or removal for an intrauterine device or for
37 monitoring an intrauterine device, when medically indicated.

38 The department of correction shall establish a formulary that consists of all FDA-
39 approved birth control methods and that shall be available free of charge and without undue
40 barriers to all incarcerated persons capable of pregnancy. If a birth control method has more than
41 one FDA-approved therapeutic equivalent, only one version of that method shall be required to
42 be made available, unless another version is specifically indicated by a prescribing health care
43 provider. Persons shall have access to nonprescription birth control methods without the
44 requirement to see a licensed health care provider.

45 Any contraceptive service that requires a prescription, or any contraceptive counseling,
46 provided to incarcerated persons who are capable of becoming pregnant, shall be furnished by a
47 licensed health care provider and shall be nondirective, unbiased, and noncoercive. Correctional
48 facilities housing persons capable of pregnancy shall ensure that at least 1 member of the
49 correctional facility's medical staff is trained in reproductive health care, which shall include
50 knowledge of contraceptive services.

51 All incarcerated people capable of pregnancy shall have access to long-acting reversible
52 contraception (LARC) services, including counseling, insertion, side effect management, and
53 removal; provided, however, that they are eligible for these methods as per the US MEC for
54 Contraceptive Use. If LARC services are not unavailable at the correctional facility, the

55 incarcerated person shall have access to such care at a supporting medical facility with
56 appropriate expertise without undue barriers.

57 Any incarcerated person capable of pregnancy shall, upon request, be allowed to continue
58 birth control methods as prescribed by a physician, nurse practitioner, certified nurse midwife, or
59 physician assistant prior to incarceration.

60 Contraceptive counseling and family planning services shall be offered and made
61 available to all incarcerated persons who are capable of becoming pregnant at least 60 days, but
62 not longer than 180 days, prior to a scheduled release date; provided, however, that such visits be
63 voluntary and not mandatory.

64 The prison health care provider shall refer any individual using contraceptives to a
65 medical provider who can manage the method at the time of release and provide refills of the
66 medication through 12-months, as indicated.

67 The department of correction shall, in consultation with the department of public health
68 and the Massachusetts Sheriffs Association, Inc., develop appropriate standards of care and
69 written policies for contraceptive care, which shall include, at a minimum, the standards for
70 health services set forth by the National Commission on Correctional Health Care. If LARC
71 services are available on site at a correctional facility, written policies addressing noncoercive
72 care and informed consent prior to LARC procedures are required.

73 Any incarcerated person who is capable of becoming pregnant shall be furnished by the
74 facility with information and education regarding the availability of family planning services and
75 their right to receive nondirective, unbiased, and noncoercive contraceptive services. Each
76 facility shall post this information in conspicuous places to which all incarcerated persons who

77 are capable of becoming pregnant have access. The document shall state the following in, at
78 minimum, English and Spanish, (1) “You have the right to start, continue, or stop birth control
79 methods; (2) The prison may not delay or prevent you from accessing reproductive health care
80 and family planning services. If the medical provider at the prison is not able to prescribe the
81 birth control method you want, they must refer you to a medical provider who can; (3) You have
82 access to the following methods, as long as you don’t have a medical condition that would make
83 a method unsafe: intrauterine devices, the contraceptive implant, injectable medroxyprogesterone
84 (“Depo” or “the shot”), birth control pills (combined and progestin-only pills), contraceptive
85 patches, vaginal contraceptive rings, diaphragms, cervical caps, contraceptive sponges, internal
86 and external condoms, and spermicide; (4) You have access to emergency contraception
87 (methods that you can use after having sex to prevent a pregnancy); (5) You should have access
88 to non-prescription family planning methods without seeing a medical professional, such as
89 internal and external condoms, spermicides, fertility awareness-based methods, and certain
90 emergency contraceptive methods; (6) You should never feel pressured or forced to start or keep
91 using a birth control method.”

92 This section does not limit an incarcerated person’s access to any method of
93 contraception that is prescribed or recommended for any medically indicated reason.

94 The Department of Correction shall implement this section no later than 1 year after its
95 passage.

96 SECTION 2. Section 118 of chapter 127 of the General Laws, as appearing in the 2020
97 Official Edition, is hereby amended by adding the following subsection:-

98 (d) Incarcerated persons found to be pregnant requesting an abortion, shall be permitted
99 to determine their eligibility for an abortion pursuant to state and federal law, and if determined
100 to be eligible, shall be permitted to obtain an abortion after giving informed consent. A prison
101 shall not confer authority or discretion to nonmedical prison staff to decide if a pregnant person
102 is eligible for an abortion. If a pregnant person decides to have an abortion, that person shall be
103 offered, but not forced to accept, all due medical care and accommodations until they are no
104 longer pregnant. A pregnant person who decides to have an abortion shall be referred to a
105 licensed medical professional. Additional conditions or restrictions beyond those mandated by
106 state or federal law are not permissible. Impermissible restrictions include, but are not limited to,
107 imposing gestational limits inconsistent with state law, unreasonably delaying access to the
108 procedure, or requiring court-ordered transportation.

109 The department of correction shall, in consultation with the department of public health
110 and the Massachusetts Sheriffs Association, Inc., develop appropriate standards of care and
111 written policies for abortion.

112 The rights provided for incarcerated persons capable of pregnancy by this subsection
113 shall be posted in at least one conspicuous place to which all incarcerated persons have access.
114 The document shall state the following in, at minimum, English and Spanish, “(1) If you are
115 pregnant or become pregnant you have the right to pregnancy care and abortion; (2) The prison
116 may not delay or prevent you from accessing care; (3) You should never feel forced or pressured
117 to continue a pregnancy or have an abortion; (4) All state and federal laws will apply to your
118 ability to access abortion.”

119 SECTION 3. Subsection (a) of section 118 of chapter 127 of the General Laws, as
120 appearing in the 2020 Official Edition, is hereby amended by inserting, in line 2, after the word
121 “sentencing” the following words:- “or upon request at any time during incarceration” and by
122 inserting, in line 6, after the word “tests;” the following words:- “provided, however, that
123 pregnancy tests be voluntary and not mandatory.”

124 SECTION 4. Subsection (a) of section 118 of chapter 127 of the General Laws, as
125 appearing in the 2020 Official Edition, is hereby amended by inserting, in line 7, after the word
126 “material” the following words:- “that includes unbiased information about prenatal health care,
127 adoption, and abortion from a licensed health care professional” and inserting, in line 9, after the
128 word “inmates;” the following words:- provided, however, that prison staff shall not urge, force,
129 or otherwise influence a pregnant person’s decision”.