

Date of Hearing: June 28, 2023

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
SB 541 (Menjivar) – As Amended May 18, 2023

[Note: This bill is double referred to the Assembly Health Committee and will be heard by that Committee as it relates to issues under its jurisdiction.]

SENATE VOTE: 31-9

SUBJECT: Sexual health: contraceptives: immunization

SUMMARY: Requires all public high schools to make condoms available to students by the start of the 2024-25 school year, and to provide information to students on the availability of condoms, as well as other sexual health information. Prohibits public schools from preventing a school-based health center from making condoms available and easily accessible to students at the school-based health center site. Specifically, **this bill:**

- 1) Requires each public school serving students in grades 9 to 12 to make internal and external condoms available to all students free of charge by the start of the 2024-25 school year to prevent and reduce unintended pregnancies and sexually transmitted infections.
- 2) Requires schools to place condoms in a minimum of two locations on school grounds where they are easily accessible to students during school hours without requiring assistance or permission from school staff, and requires that condoms placed in locations not regularly supervised by school staff be stored in tamper-proof dispensers.
- 3) Requires public schools to inform students at the beginning of each school year, through regular school communication channels, that free condoms are available and where the condoms can be obtained.
- 4) Requires public schools to prominently post at least one notice regarding the availability of free condoms in appropriate areas that are accessible to, and commonly frequented by, students, and requires the notice to include all of the following:
 - a) The text of this section;
 - b) The contact information, including an email address and telephone number, for a designated individual responsible for maintaining the supply of condoms;
 - c) Information that abstinence from sexual activity and injection drug use is the only certain way to prevent HIV and other sexually transmitted infections and that abstinence from sexual intercourse is the only certain way to prevent unintended pregnancy;
 - d) Information directing pupils to where they can find information about how to use condoms properly; and
 - e) Information on how to access local resources and pupils' legal rights to access local resources for sexual and reproductive health care such as testing and medical care for

HIV and other sexually transmitted infections and pregnancy prevention and care, as well as local resources for assistance with sexual assault and intimate partner violence.

- 5) Requires public schools serving students in grades 7 to 12 to allow the distribution of condoms during the course of educational or public health programs and initiatives, including any of the following:
 - a) Community organizations or other entities providing instruction on the California Healthy Youth Act;
 - b) Pupil peer health programs, clubs, or groups;
 - c) Pupil health fairs conducted on campus; and
 - d) School-based health center staff.
- 6) Authorizes a state agency, the California Department of Education (CDE), or a public school to accept gifts, grants, and donations from any source for the support of a public school carrying out the provisions of this section, including, but not limited to, the acceptance of condoms from a manufacturer or wholesaler.
- 7) Encourages public schools to explore partnerships with local health jurisdictions, community health centers, nonprofit organizations, and the State Department of Public Health (CDPH) to comply with these requirements.
- 8) Prohibits a public school serving students in grades 7 to 12, a school district, the CDE, or a county office of education (COE), from preventing a school-based health center from making internal and external condoms available and easily accessible to pupils at the school-based health center site.
- 9) Defines “public school” to include a school operated by a school district, COE, or a charter school.
- 10) Defines “school-based health center” as a center or program, located at or near a public school, that provides age-appropriate health care services at the program site or through referrals, and that may conduct routine physical, mental health, and oral health assessments, and provide referrals for any services not offered onsite. Includes a center or program that may serve two or more nonadjacent schools or local educational agencies (LEAs).
- 11) Defines “local health jurisdiction” as a county health department or combined health department in the case of counties acting jointly or city health department.
- 12) Requires the Family PACT program to provide coverage for immunization against human papilloma virus (HPV), as clinically indicated, to persons between 12 and 18 years of age.
- 13) Prohibits a retail establishment from refusing to furnish nonprescription contraception to a person solely on the basis of age by means of any conduct, including, but not limited to, requiring the customer to present identification for purposes of demonstrating their age.

EXISTING LAW:

- 1) Establishes the California Healthy Youth Act to provide pupils with the knowledge and skills necessary to protect their sexual and reproductive health from HIV and other sexually transmitted infections and from unintended pregnancy, and, among other things, to ensure that pupils receive integrated, comprehensive, accurate, and unbiased sexual health and HIV prevention instruction, and provide educators with clear tools and guidance to accomplish that objective. (Education Code (EC) 51930)
- 2) Requires each school district to ensure that all students in grades 7 to 12 receive comprehensive sexual health education and HIV prevention at least once in junior high or middle school and once in high school. Requires this instruction to include information about the value of delaying sexual activity while also providing medically accurate information on other methods of preventing HIV and other sexually transmitted infections and pregnancy, as well as information about the effectiveness and safety of all FDA-approved contraceptive methods in preventing pregnancy, including, but not limited to, emergency contraception. (EC 51934)
- 3) Requires LEAs, at the beginning of each school year, or, for a pupil who enrolls in a school after the beginning of the school year, at the time of that pupil's enrollment, to provide parents and guardians with a notice:
 - a) About instruction in comprehensive sexual health education and HIV prevention education and research on pupil health behaviors and risks planned for the coming year.
 - b) Advising the parent or guardian that the educational materials used in sexual health education are available for inspection.
 - c) Advising the parent or guardian whether the comprehensive sexual health education or HIV prevention education will be taught by school district personnel or by outside consultant, as provided.
 - d) Advising the parent or guardian that the parent or guardian has the right to excuse their child from comprehensive sexual health education and HIV prevention education and that in order to excuse their child they must state their request in writing to the LEA. (EC 51938)
- 4) Provides that the parent or guardian of a pupil has the right to excuse their child from all or part of that education, including related assessments, through a passive consent ("opt-out") process and prohibits a school district from requiring active parental consent ("opt-in") for sexual health education for pupils of any grade. (EC 51938)

FISCAL EFFECT: According to the Senate Appropriations Committee:

- 1) By requiring schools to provide condoms for free to students in grades 9 through 12, this bill could result in a reimbursable state mandate. The magnitude of the costs is unknown but could be in the high hundreds of thousands to low millions of dollars in Proposition 98 General Fund each year. To the extent that school districts elect not to file mandate claims

for these activities, this could place additional cost pressure on the K-12 Mandate Block Grant.

- 2) The bill's requirement to provide coverage for immunization against HPV could result in increased program costs potentially in the low tens of millions of dollars each year. A precise amount will largely depend on the actual take up rate of eligible Medi-Cal recipients.
- 3) The Department of Public Health indicates that any costs to the department related to the bill's prohibition on retail establishments would be minor and absorbable within existing resources.

COMMENTS:

Need for the bill. According to the author “By requiring free condoms in all California high schools, we are empowering the youth who decide to become sexually active to protect themselves and their partners from sexually transmitted infections (STIs), while also removing barriers that potentially shame them and lead to unsafe sex. Further, requiring the Family PACT program to cover human papillomavirus (HPV) vaccinations for ages 12-18 will decrease instances of patients delaying vaccination or becoming discouraged after being turned away. These programs can instill safe sexual habits among youth, protecting themselves now and into adulthood.”

California Healthy Youth Act. Beginning in 2016 with AB 329 (Weber) for the first time, required LEAs to provide comprehensive sexual health education and HIV prevention education to all students at least once in middle school and at least once in high school. Parents are afforded the right to opt their child out of a portion, or all, of the instruction and LEAs are required to notify parents and guardians of this right.

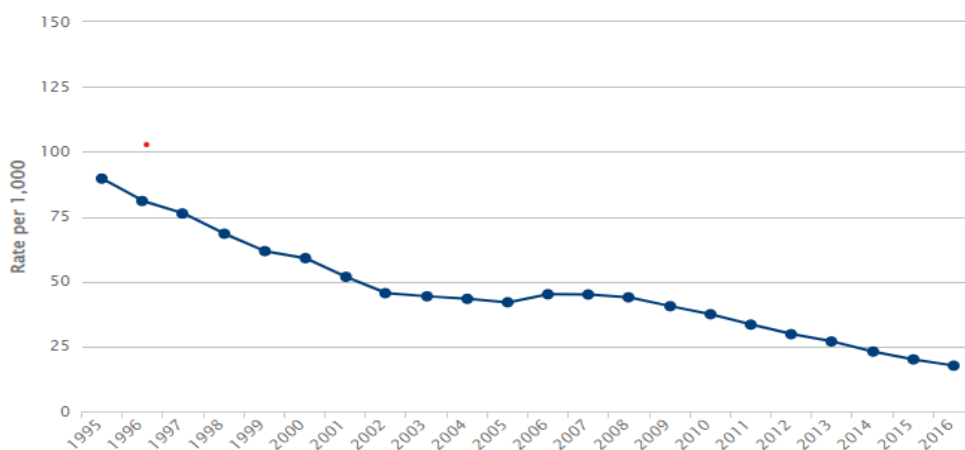
Sexual health of teens. Sexual health is a critical component of overall teen health. While sexuality is a normal part of adolescent development, sexual activity can have serious consequences, including STIs and unintended pregnancy. According to survey data for the 2017-2018 school year, an estimated 87% of California teens ages 14-17 had never had sex. Young people who engage in sexual activity may be at risk for sexually transmitted infections such as chlamydia and gonorrhea. In 2018, more than 48,000 new chlamydia and gonorrhea infections were reported among teens ages 15-19 statewide. (KidsData.org)

It is estimated that although young people ages 15-24 make up 13% of the U.S. population, they represent around 25% of the sexually active population and account for around 50% of all new STI cases each year. Among infectious diseases that must be reported to the U.S. government, chlamydia and gonorrhea are the most common, with young people ages 15-24 having the highest rates of infection when compared with other age groups. Nationwide, African American youth experience especially high rates of chlamydia and gonorrhea; in 2021, black youth ages 15-19 were diagnosed with chlamydia at more than five times the rate for white youth of the same age, and with gonorrhea at nearly 12 times the rate of their white peers. (KidsData.org)

Rates of teenage pregnancy have declined over time. The number of births per 1,000 women ages 15-19 in California has declined by 75% over the past 20 years from 89.6 in 1995 to 17.6 in 2016, as shown below. Despite these improvements, many counties continue to have high rates,

with some exceeding 30 births per 1,000 teens in 2016. The majority of teen births statewide are to women ages 18-19, though rates have declined for all age groups.

Rates of Teen Births Per 1,000 women to youth ages 15-19 from 1995-2016



Source: KidsData.org

Despite the relatively low birth rates among teens overall, disparities exist along race/ethnicity lines, as Hispanic, African American, and American Indian/Alaska Native youth experience births at much higher rates than their White or Asian peers.

Race/ethnicity	Number of births per 1,000 women ages 15-19, by race/ethnicity
African American	17.6
American Indian/Alaska Native	17.8
Asian/Pacific Islander	2.5
Hispanic/Latina	23.7
White	6.2
Multiracial	11.6

Research notes that adolescent births are associated with serious challenges and negative outcomes for parents, their children, and society overall. Teen mothers are more likely than mothers in their 20s and early 30s to have premature births, infants with low birthweight, and babies who die in infancy. Children of teens also are at increased risk for physical, behavioral,

cognitive, and academic challenges later in life. Children born to teens are more likely to drop out of high school, enter the criminal justice system in adolescence, become teen parents themselves, and experience unemployment in adulthood, compared with children born to older mothers. (KidsData.org)

Access to condoms by adolescents. The external condom remains the most popular contraceptive method among adolescents. Data from the Centers for Disease Control and Prevention (CDC)'s 2017 Youth Risk Behavior Surveillance (YRBS) reported that while overall sexual activity decreased among high school students, barrier method use (referred to as condom use in the YRBS) also declined among sexually active adolescents. Among sexually active high school students, 54% reported condom use during their last sexual encounter, a decline from 62% in 2007. Among 12th-grade students, 57% reported ever being sexually active, but they had the lowest use of condoms among all grades. (Grubb, 2020)

Condoms are available over the counter in all states but may be difficult for teens to access as many stores stock condoms in inaccessible locations that require a store attendant to assist the customer. The costs of condoms may also be a limiting factor for many young people. This bill would address the availability and affordability of condom use for teens by making these items accessible at no cost in schools. The bill also prohibits retail establishments from refusing to furnish nonprescription contraception solely on the basis of age.

In 2017, the Society for Adolescent Health and Medicine published a position statement, "Condom Availability in Schools: A Practical Approach to the Prevention of Sexually Transmitted Infection/HIV and Unintended Pregnancy," recommending increased barrier method availability at schools. Studies have found that school condom programs do not increase sexual activity, the number of sexual partners, or risk behaviors. (Grubb, 2020)

According to the author's office, school in some regions across the state have been providing free condoms to students for decades, leaving teens in other regions – including regions with some of the highest rates of STIs and pregnancies among youth – without equitable access to condoms and preventive health care. Schools that distribute condoms do so by establishing partnerships to obtain condoms supplies. Both the Los Angeles Unified School District and San Francisco Unified School District established condom access programs in the 1990s at high schools with the support of funding from the CDC. Some county departments of public health and local health jurisdictions provide condoms to their local high schools, such as in the Long Beach Unified School District. At some high schools in the city of Fresno and other cities across California, campuses collaborate with community health centers, Planned Parenthood affiliates, or other community-based organizations to obtain condom supplies.

Recommended Committee Amendments. Staff recommend that the bill be amended as follows:

- 1) Remove the requirement that the notice that schools must post regarding the availability of condoms at the schoolsite include the text of the Education Code section.
- 2) Add state special schools to the definition of public schools.

Arguments in support. The California School-Based Health Alliance writes, "More than 325,000 Californians were infected with syphilis, chlamydia, or gonorrhea in 2019. Young people, and in particular youth of color, are disproportionately impacted. Statewide data indicate over half of all

STIs in the state are experienced among California youth ages 15 – 24 years old. Young people in this age group make up more than 5 out of every 10 chlamydia cases in California, and more than 87% are youth of color.

Condoms are an effective tool to reduce STI transmission, but condom use among sexually active teens has declined over the last decade. The CDC’s Youth Risk Behavior Surveillance System shows that in 2019, an average of 20% of California high school students were sexually active and 47% of those students did not use condoms during their last sexual intercourse. Teens have long reported facing multiple barriers to accessing condoms that deter them from seeking and securing the resources they need to protect themselves against STIs and unintended pregnancy. When barriers remain, youth with low-incomes are often left without the option to regularly utilize condoms to help protect their health and prevent an unintended pregnancy from occurring.

Some California high schools distribute free condoms to students, including schools in the Los Angeles and San Francisco Unified School Districts, in an effort to curb STI rates and reduce unintended pregnancy. However, not all schools do so, leaving youth in other regions – including regions with some of the highest rates of STIs and pregnancies among youth – without equitable access to condoms and preventive health resources. California youth need and deserve equitable access to condoms to protect their health and safety. The scope of the STI epidemic requires bold action. To reduce public health disparities, we must ensure that California youth have equitable access to condoms and the HPV vaccine.”

Arguments in opposition. Two individuals express their opposition, but did not provide any details.

Related legislation. AB 659 (Aguiar-Curry) of the 2023-24 Session requires a health care service plan contract or a disability insurance policy to provide coverage without cost sharing for the HPV vaccine. Expands comprehensive clinical family planning services under the Family Planning, Access, Care, and Treatment Program to include the HPV vaccine. Specifies that it is the public policy of this state that: 1) pupils are expected to be fully immunized against HPV before admission or advancement to the 8th grade level of any private or public elementary or secondary school; and, 2) students who are 26 years of age or younger are expected to be fully immunized against HPV before first-time enrollment at an institution of the California State University (CSU), the University of California (UC), or the California Community Colleges (CCC). Requires, upon a pupil's admission or advancement to the 6th grade level, the governing authority to submit to the pupil and their parent or guardian a notification containing a statement about the state's public policy on HPV and advising that the pupil be fully immunized before admission or advancement to the 8th grade level.

AB 2482 (Calderon) Chapter 933, Statutes of 2022, establishes the Wellness Vending Machine Pilot Program, until July 1, 2029, that requires the CSU and the CCC to establish at five campuses of their perspective segments at least one vending machine that dispenses wellness products, including condoms. Additionally, this bill requests the UC to establish at any number of its campuses, at least one vending machine that dispenses wellness products.

AB 329 (Weber), Chapter 398, Statutes 2016, made instruction in sexual health education mandatory, revises HIV prevention education content, expands topics covered in sexual health education, requires this instruction to be inclusive of different sexual orientations, and clarifies parental consent policy.

AB 367 (C.Garcia), Chapter 664, Statutes of 2021, requires all public schools serving students in grades 6 to 12 to stock specified restrooms with an adequate supply of free menstrual products, commencing in the 2022-23 school year; and requires the CSU and the CCC, and encourages the Regents of the UC, independent institutions of higher education, and private postsecondary educational institutions, to stock an adequate supply of free menstrual products at no fewer than one designated and accessible central location on each campus.

REGISTERED SUPPORT / OPPOSITION:

Support

ACT for Women and Girls
Adolescent Health Working Group
Aids Healthcare Foundation
Alameda County Board of Supervisors
American College of Obstetricians and Gynecologists District IX
Black Women for Wellness Action Project
California Coalition for Youth
California Faculty Association
California Health+advocates
California Nurse Midwives Association
California School-based Health Alliance
California Teachers Association
California Women's Law Center
Capslo the Center for Health & Prevention
Citizens for Choice
Coachman Moore and Associates
Community Clinic Association of Los Angeles County
Desert Aids Project D/b/a Dap Health
Essential Access Health
Genders & Sexualities Alliance Network
GenUp
Glide
Naral Pro-choice California
National Center for Youth Law
National Harm Reduction Coalition
National Health Law Program
Planned Parenthood Affiliates of California
Radiant Health Centers
Realistic Education in Action Coalition to Foster Health
San Francisco Aids Foundation
The Los Angeles Trust for Children's Health
Training in Early Abortion for Comprehensive Health Care
UCLA Bixby Center on Population and Reproductive Health
Urge
Women's Foundation California
Women's Health Specialists

Opposition

2 individuals

Analysis Prepared by: Debbie Look / ED. / (916) 319-2087