

Date of Hearing: June 12, 2024

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
SB 954 (Menjivar) – As Amended June 3, 2024

[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: 29-9

SUBJECT: Sexual health: contraceptives

SUMMARY: Requires all public high schools to make condoms available to students by the start of the 2025-26 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; and prohibits retail establishments from refusing to provide nonprescription contraception to a person solely on the basis of age. 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 2025-26 school year to prevent and reduce unintended pregnancies and sexually transmitted infections (STIs).
- 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.
- 3) Requires schools to inform students of the availability and location of the free condoms at the beginning of each school year through existing school communication channels.
- 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 contact information, including an email address and telephone number, for a designated individual responsible for maintaining the supply of condoms;
 - b) Information that abstinence from sexual activity and injection drug use is the only certain way to prevent human immunodeficiency virus (HIV) and other sexually transmitted infections and that abstinence from sexual intercourse is the only certain way to prevent unintended pregnancy;
 - c) Information directing pupils to where they can find information about how to use condoms properly; and
 - d) Information on how to access local resources and students' 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 a public school, upon request, to provide the notice in (4) in an accessible format to ensure all students, including but not limited to those with visual disabilities, are able to access the notice.
- 6) 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.
- 7) Requires the governing board or body of a public school to designate one employee at each schoolsite to implement the requirements of (1) to (6) above.
- 8) Makes the implementation of these provisions contingent upon an appropriation for this purpose.
- 9) 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.
- 10) 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.
- 11) 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.
- 12) Requires the CDE to monitor compliance with the provisions of this bill as part of its annual compliance monitoring of state and federal programs.
- 13) Defines “public school” to include a school operated by a school district, COE, or a charter school.
- 14) Defines “local health jurisdiction” as a county health department or combined health department in the case of counties acting jointly or city health department.

- 15) 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.
- 16) 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.
- 17) Defines “retail establishment” as any vendor that furnishes nonprescription contraception directly to the public, including, but not limited to, a pharmacy, grocery store, or other retail store.

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 Food and Drug Administration (FDA)-approved contraceptive methods in preventing pregnancy, including, but not limited to, emergency contraception. (EC 51934)
- 3) Requires school districts, 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 consultants; and
 - 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 school district. (EC 51938)

FISCAL EFFECT: According to the Senate Appropriations Committee, the bill's requirement for schools to provide condoms for free to students in grades 9 through 12 would be contingent upon an appropriation, resulting in Proposition 98 General Fund cost pressure in the low millions of dollars in Proposition 98 General Fund each year. A precise amount would ultimately depend on how many condoms schools decide to make available. There could also be one-time cost pressures of an unknown amount to buy and install tamper-proof dispensers and post the notices with specified information.

COMMENTS:

Need for the bill. According to the author, "We cannot continue ignoring the STI epidemic among our youth when some high schools and retailers are enacting dangerous policies that deny them the ability to protect themselves. SB 954 aims to safeguard the health and futures of high school students statewide by increasing equitable access to condoms while also increasing fiscal responsibility. Investing in prevention is a fraction of the cost compared to the millions California spends on the treatment of STIs every year. This isn't about a catchy headline but rather the health and safety of our youth."

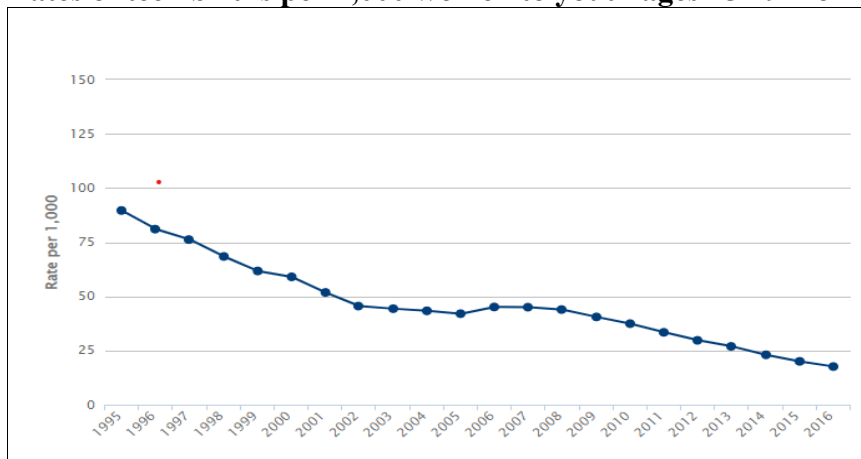
California Healthy Youth Act. Since 2016, AB 329 (Weber), Chapter 398, Statutes of 2015 was required, school districts, COEs, and the state special schools provide comprehensive sexual health education and HIV prevention education to all students at least once in middle school and at least once in high school. Parents are afforded the right to opt their child out of a portion, or all, of the instruction and schools 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. Young people who engage in sexual activity may be at risk for STIs 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)

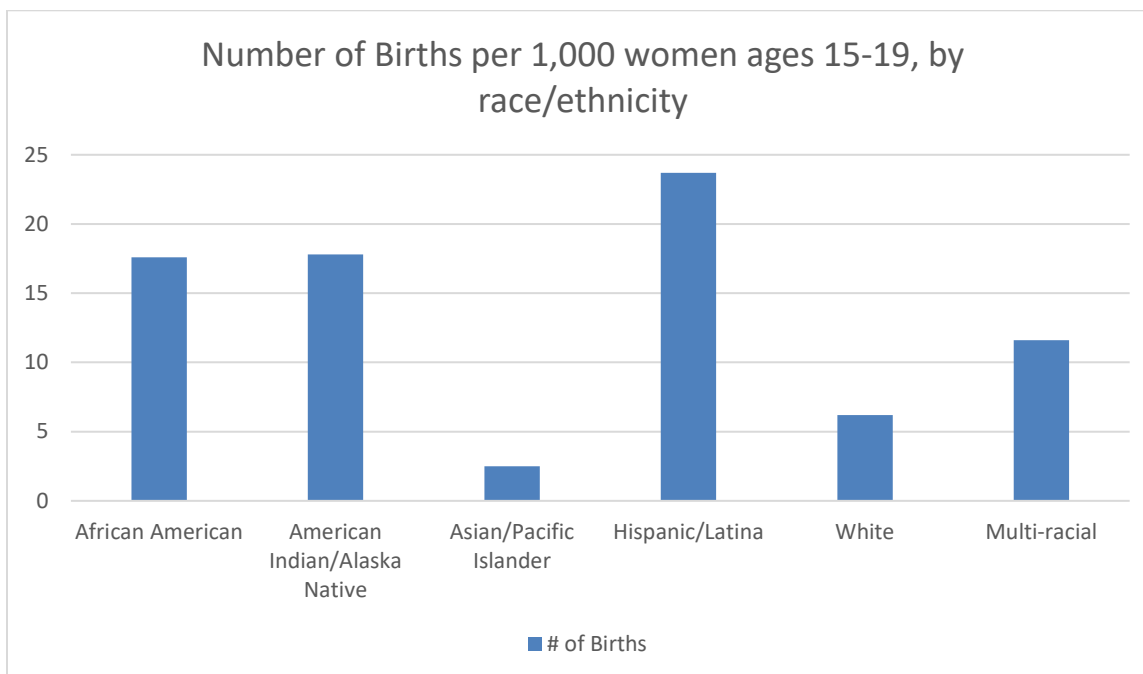
It is estimated that although young people ages 15-24 make up 13% of the U.S. population, they represent around 25% of the sexually active population and account for approximately 50% of all new STI cases each year. Among infectious diseases that must be reported to the U.S. government, chlamydia and 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



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, as shown in the table above.

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 are also 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's (CDC) 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)

In a survey of California youth in January 2024, 68% of teens indicated that they do not have access to condoms in schools. (Teen Source, 2024) 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 risky behaviors. (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. According to information provided by the author, both teens and young adults have long reported being shamed, harassed, and discriminated against at some pharmacies and retailers while attempting to buy condoms, including being asked to show identification or denied service as they appeared to be too young, despite the fact that there are no age requirements for condom purchases. The cost 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.

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 condom 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.

Categorical program monitoring. This bill would add a school's compliance with the requirement to provide free condoms and associated information to the regular categorical monitoring process. According to the CDE, federal and state laws require the CDE to monitor implementation of categorical programs operated by LEAs as LEAs are responsible for creating and maintaining programs which meet minimum fiscal and programmatic requirements.

LEAs are assigned to one of four cohorts: A, B, C or D. Each school year, approximately 130 LEAs are selected for review—65 LEAs from one cohort for an onsite review, and 65 LEAs from a different cohort for an online review. The LEAs are selected using established selection criteria including program size, fiscal analysis, compliance history, and continuous improvement. The Cohort Rotation Schedule by School Year demonstrates the rotation of the cohorts over a four-year cycle. The purpose of the review is to ensure that they are spending the funding as required by law. At the end of each review, the state will complete a report that details any findings of non-compliance and informs the school, district, or county office how to correct the findings. Within 45 calendar days after the date of the Notification of Findings (NOF), the LEA must resolve each finding or request an extension.

Arguments in support. The American Academy of Pediatricians writes, “The California Healthy Youth Act has already made significant strides in ensuring that students receive comprehensive sexual health education and HIV prevention education. However, access to contraceptives remains a crucial component of sexual health care that must be addressed.

Providing access to condoms in schools is not only a matter of promoting safer sex practices but also a means of empowering students to make informed choices about their sexual health. Research has consistently shown that access to condoms in schools can lead to a decrease in rates of unintended pregnancies and STIs among adolescents. By making condoms readily available on school grounds, SB 954 has the potential to positively impact the health and well-being of California's youth.

SB 954 emphasizes the importance of education by requiring schools to inform students about the availability of free condoms and how to use them properly. This educational component is essential for ensuring that students are equipped with the knowledge and skills they need to protect themselves and their partners. Students deserve access to comprehensive sexual health education and resources that support their well-being. By supporting SB 954, we can take a proactive approach to promoting healthy behaviors and reducing the risk of unintended consequences associated with sexual activity.”

Arguments in opposition. The Concerned Women for America Legislative Action Committee writes, “SB 954 requires public schools, grades 7 to 12, to provide condoms to students through partnerships with various providers and school-based health centers. This policy does not serve an educational purpose; rather, this topic is a discussion and decision best left to families.

Providing condoms in schools, including unsupervised areas where even staff are not available to counsel students, interferes with a parent’s right to decide when such decisions are appropriate for their children. While we appreciate that information about abstaining from sexual activity as the only certain prevention of pregnancy and STIs is at least provided on notices, the availability of free condoms creates a mixed message.

The public schools’ promotion of safe sex through condoms puts more children at risk of emotional, physical, and social harm. Development of a child’s self-esteem, including the courage to say no or to wait before engaging in sexual activity, is safer than condoms. SB 954 pressures schools, peers, and families to accept the idea of safe sex through external rather than internal means. Further, the bill forces merchants to sell condoms and other contraceptives to children of any age. This not only infringes upon their right to run their business based on their conscience and better judgment but could also aid and abet sex trafficking.”

Related legislation. SB 541 (Menjivar) of the 2023-24 Session was substantially similar to this measure. This bill was vetoed by the Governor with the following message:

While evidence-based strategies, like increasing access to condoms, are important to supporting improved adolescent sexual health, this bill would create an unfunded mandate to public schools that should be considered in the annual budget process.

In partnership with the Legislature, we enacted a budget that closed a shortfall of more than \$30 billion through balanced solutions that avoided deep program cuts and protected education, health care, climate, public safety, and social service programs that are relied on by millions of Californians. This year, however, the Legislature sent me bills outside of this budget process that, if all enacted, would add nearly \$19 billion of unaccounted costs in the budget, of which \$11 billion would be ongoing.

With our state facing continuing economic risk and revenue uncertainty, it is important to remain disciplined when considering bills with significant fiscal implications, such as this measure. For this reason, I cannot sign this bill.

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

AB 2312 (Lee) of the 2021-22 Session would have prohibited a retail establishment from refusing to furnish nonprescription contraception solely on the basis of age and would have required a \$25,000 penalty for the retail establishment for each violation. This bill was held in the Assembly Health Committee.

AB 329 (Weber), Chapter 398, Statutes of 2015, 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.

REGISTERED SUPPORT / OPPOSITION:

Support

Access Reproductive Justice
Aids Healthcare Foundation
Alameda County Board of Supervisors
Alliance for Children's Rights
American Academy of Pediatrics, California
American Civil Liberties Union California Action
American College of Obstetricians and Gynecologists District IX
APLA Health
Asian Americans Advancing Justice-southern California
Bienestar Human Services

Black Women for Wellness Action Project
Buen Vecino
California Association for Health, Physical Education, Recreation & Dance
California Coalition for Youth
California Legislative LGBTQ Caucus
California Nurse-Midwives Association
California Pan - Ethnic Health Network
California Primary Care Association
California School-based Health Alliance
California Teachers Association
Children Now
Citizens for Choice
Community Health Councils
Courage California
Equality California
Essential Access Health
Generation Up
Glide
Health Officers Association of California
Indivisible CA Statestrong
Los Angeles LGBT Center
Maternal and Child Health Access
National Health Law Program
Period @ Irvine, CA
Raizes Collective
Reproductive Freedom for All California
Sacramento LGBT Community Center
San Francisco Aids Foundation
SF Black and Jewish Unity Coalition
The Los Angeles Trust for Children's Health
The Source LGBT+ Center
Training in Early Abortion for Comprehensive Health Care
Unite for Reproductive and Gender Equity
Urge: Unite for Reproductive & Gender Equity
Voters of Tomorrow
Women's Health Specialists
Young Invincibles

Opposition

California Baptist for Biblical Values
California Family Council
Concerned Women for America
Lighthouse Baptist Church
Real Impact

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