

HB 2535 STAFF MEASURE SUMMARY

House Committee On Judiciary

Prepared By: Patricia Pascone, LPRO Analyst

Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 2/27, 3/2

WHAT THE MEASURE DOES:

Directs the Department of Corrections ("Department") to establish a doula program at Coffee Creek Correctional Facility for adults in custody who are pregnant or who have given birth in the past year, and to create and fill a pregnancy coordinator position that will act as a single point of contact. Specifies particular services a doula will provide for physical, emotional and informational support, including culturally specific and trauma-informed birth plans, and support and assistance during labor, childbirth, and the postpartum period. Permits the Department to partner with community-based professionals to provide services. Requires that Department transport officers have a policy checklist and copy of the birth plan, and document any variance from them and the reason for it. Prohibits shackling of an adult in custody during labor, childbirth, or postpartum recovery in the hospital, and restriction of movement that interferes with holding or nursing the infant, establishing a milk supply, or receiving specific postpartum care. Prohibits the Department from conducting a body cavity search of, or removing clothing from, an adult in custody arriving at a facility following childbirth, except when the search is due to a concern for safety or suspicion of contraband; only a health care professional may conduct the search.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Current Department of Corrections rules provide that maternity care is a level one priority, and that electronic control devices must not be used on an adult in custody that is known to be pregnant.

The U.S. Department of Justice conducted a study in 2014 for its National Task Force on the Use of Restraints with Pregnant Women under Correctional Custody, and reported that approximately 4% of adults in custody in state prisons reported being pregnant at intake, and approximately 5% of adults in custody in jails were pregnant at intake. In 2018, the U.S. Congress passed the First Step Act, which generally prohibits U.S. Marshals or Bureau of Prisons corrections officials from restraining pregnant or postpartum prisoners. The Ninth Circuit Court of Appeals has ruled that an inmate could proceed with a claim alleging a violation of the Eighth Amendment based on restraint of her when she was in labor and postpartum recovery. *Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1254 (9th Cir. 2016).

HB 2535 would establish a doula program at the Coffee Creek Correctional facility, prohibit shackling of pregnant or post-partum adults in custody during labor, delivery or postpartum recovery in the hospital, and restrict the use of body cavity searches on adults in custody following childbirth.