

A-Engrossed House Bill 2535

Ordered by the House March 14
Including House Amendments dated March 14

Sponsored by Representative REYNOLDS; Representatives BOSHART DAVIS, BOWMAN, BYNUM, DEXTER, GRAYBER, HARTMAN, HIEB, HUDSON, KROPF, LEVY E, LEWIS, MARSH, MORGAN, NELSON, NERON, NOSSE, SCHARF, TRAN, VALDERRAMA, WALLAN, WALTERS (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires Department of Corrections to establish doula program for pregnant and postpartum adults in custody at Coffee Creek Correctional Facility. Specifies requirements of program and doula services that must be provided to pregnant adults in custody and during one-year postpartum period.

[Prohibits shackling of adults in custody during labor, childbirth and postpartum recovery in hospital. Prohibits restrictions in movement that interfere with postpartum individual's ability to hold or nurse infant, establish milk supply or receive postpartum recovery care.]

Limits use of mechanical restraints on adults in custody during labor, childbirth and postpartum recovery in hospital. Prohibits use of mechanical restraints in manner that interferes with postpartum individual's ability to hold or nurse infant, establish milk supply, obtain lactation support or receive postpartum recovery care.

[Prohibits pregnant persons or adults in custody who arrive at Department of Corrections facility from undergoing specified types of searches. Permits exceptions when determined and documented concern for safety or suspicion of contraband exists. Requires specified searches to be performed by health care professionals.]

Requires department to use medically appropriate procedures constituting least restrictive means to ensure safe transport and arrival at correctional facility following adult in custody giving birth to child at hospital.

Directs department to develop certain procedures to implement program and report to Legislative Assembly no later than March 15, 2024.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to pregnancy in correctional facilities; and prescribing an effective date.

3 Whereas, over the past several decades, the number of women incarcerated in the United States
4 has increased nearly 650 percent, with over 200,000 women currently in a correctional facility; and

5 Whereas the United States Department of Justice estimates that between 5 and 10 percent of
6 female adults in custody are pregnant at the time of incarceration; and

7 Whereas approximately 68,000 children in Oregon have or have had an incarcerated parent; and

8 Whereas, compared to women in the general population, pregnant incarcerated women have a
9 higher risk of poor birth outcomes, including preterm birth (birth prior to 37 weeks of gestation) and
10 small-for-gestational-age babies (below the 10th percentile for babies born at the same gestational
11 age); and

12 Whereas incarceration impacts more than a mother's pregnancy in that the separation of
13 incarceration causes a disruption in the parent-child bond, which can lead to insecure attachment
14 and cause a variety of adverse outcomes; and

15 Whereas as many as 70 percent of young children with incarcerated mothers have emotional or
16 psychological problems that can extend far into adulthood; and

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 Whereas pregnant incarcerated women often lack appropriate labor and delivery support and
2 may find themselves restrained while in the hospital or in transport to or from the hospital; and

3 Whereas post-delivery mothers are given 24 to 48 hours or less of recovery time in the hospital
4 to rest and bond with their newborns, often undergo an invasive cavity search upon return from the
5 hospital and lack access to the physical and mental recovery resources necessary during their
6 postpartum period; and

7 Whereas incarcerated mothers lack consistent and adequate lactation resources or ways to get
8 breast milk to their infants; and

9 Whereas the success or failure of the criminal justice system to adequately respond to the needs
10 of pregnant incarcerated women has important implications for their health and the health of their
11 offspring; now, therefore,

12 **Be It Enacted by the People of the State of Oregon:**

13 **SECTION 1.** (1) **The Department of Corrections shall establish a doula program for**
14 **pregnant and postpartum adults in custody at the Coffee Creek Correctional Facility.**

15 (2) **The doula program must provide doula services to adults in custody who are pregnant**
16 **or who have given birth in the last year. Persons providing doula services must be granted**
17 **appropriate facility access, must be allowed to attend and provide assistance during labor and**
18 **childbirth when feasible and must have access to the adult in custody's relevant health in-**
19 **formation if the adult in custody authorizes disclosure.**

20 (3) **The department shall have one employee serve as the contact and coordinator for all**
21 **persons providing doula services at the Coffee Creek Correctional Facility.**

22 (4) **Doula services are services provided by a trained doula that are designed to provide**
23 **physical, emotional or informational support to a pregnant adult before, during and after**
24 **delivery of a child. Doula services provided to adults in custody at the Coffee Creek**
25 **Correctional Facility must include, but are not limited to:**

26 (a) **Prenatal, postpartum and parent education;**

27 (b) **Development of a trauma-informed and culturally specific birth plan for each preg-**
28 **nant adult in custody;**

29 (c) **In-person attendance by a doula at routine prenatal visits, ultrasound imaging ap-**
30 **pointments and lab testing appointments;**

31 (d) **Consultation and participation in the determination of the stages and progression of**
32 **labor when determining the transport to a hospital or other delivery facility;**

33 (e) **Culturally specific and trauma-informed support and assistance during labor and**
34 **childbirth and the postpartum period;**

35 (f) **Assistance with breastfeeding or milk expression after childbirth if requested by the**
36 **adult in custody;**

37 (g) **Enrollment of the adult in custody in the breastfeeding program and in a breastmilk**
38 **transportation program for delivery of the mother's milk to the infant, including facilitating**
39 **access to a breast pump and pumping supplies; and**

40 (h) **Support in the event an adult in custody has been or will become separated from her**
41 **child.**

42 (5) **Services provided under this section may not supplant health care services routinely**
43 **provided to adults in custody.**

44 (6) **For each adult in custody who is being provided transport to a hospital for labor and**
45 **delivery, the department transport officer shall have a checklist of the policies to be adhered**

1 to during the transport and a copy of the birth plan.

2 (7) If it is not feasible for a doula to attend and provide assistance during the labor and
3 delivery of an adult in custody, the reason for the lack of feasibility for a doula's attendance
4 must be documented in the adult in custody's medical file and an alternative birth plan must
5 be developed, implemented and documented in the medical file.

6 (8) The department may partner with community professionals who have been creden-
7 tialled in their line of service, trained or otherwise have specific expertise to provide the
8 doula services described in this section.

9 (9) As used in this section "postpartum period" means a period of one year following
10 childbirth.

11 **SECTION 2.** (1) An adult in custody may not be restrained mechanically during labor,
12 childbirth or postpartum recovery in a hospital unless:

13 (a) The mechanical restraints are reasonably necessary, as determined by a supervising
14 officer, for the safety and security of the adult in custody, correctional staff, other persons
15 or the public; and

16 (b) The attending physician determines that use of the mechanical restraints does not
17 present a medical risk to the adult in custody.

18 (2) Notwithstanding subsection (1) of this section, the use of a mechanical restraint:

19 (a) May not interfere with the adult in custody's ability to hold the infant, nurse the in-
20 fant, establish a milk supply, obtain lactation support or receive other postpartum recovery
21 care from hospital staff.

22 (b) Must be in the least restrictive manner possible.

23 **SECTION 3.** After giving birth to a child at a hospital, an adult in custody must be sub-
24 ject to medically appropriate procedures constituting the least restrictive means to ensure
25 safe transport to and arrival at a Department of Corrections facility.

26 **SECTION 4.** (1) Prior to implementing the doula program established under section 1 of
27 this 2023 Act, the Department of Corrections shall develop procedures, informed by feedback
28 from stakeholders and received at the listening sessions described in subsection (2) of this
29 section, to:

30 (a) Document compliance or noncompliance with the checklist of policies under section
31 1 (6) of this 2023 Act and ensure that the documentation is stored in the adult in custody's
32 file.

33 (b) Document any use of mechanical restraints under section 2 of this 2023 Act, including
34 when and why the restraints were used and ensure that the documentation is stored in the
35 adult in custody's file.

36 (c) Minimize the severity and invasiveness of the transport and arrival procedures de-
37 scribed in section 3 of this 2023 Act, including strip searches and body cavity searches.

38 (2) The department shall participate in at least two listening sessions with individuals
39 who gave birth while in the custody of the department.

40 (3)(a) The department shall provide a report on the actions taken to implement the doula
41 program to the interim committees of the Legislative Assembly related to the judiciary in
42 the manner provided under ORS 192.245 no later than March 15, 2024.

43 (b) The report must examine the procedures described in subsection (1) of this section.

44 **SECTION 5.** Section 4 of this 2023 Act is repealed on January 2, 2025.

45 **SECTION 6.** (1) Sections 1 to 3 of this 2023 Act become operative on June 1, 2024.

1 **(2) The Department of Corrections may take any action before the operative date speci-**
2 **fied in subsection (1) of this section to enable the department to exercise, on and after the**
3 **operative date specified in subsection (1) of this section, all of the duties, functions and**
4 **powers conferred on the department by sections 1 to 3 of this 2023 Act.**

5 **SECTION 7.** **This 2023 Act takes effect on the 91st day after the date on which the 2023**
6 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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