

Enrolled House Bill 2535

Sponsored by Representative REYNOLDS, Senator PATTERSON; Representatives BOSHART DAVIS, BOWMAN, BYNUM, CRAMER, DEXTER, FAHEY, GAMBA, GRAYBER, HARTMAN, HIEB, HUDSON, KROPF, LEVY B, LEVY E, LEWIS, MARSH, MORGAN, NELSON, NERON, NOSSE, PHAM K, RESCHKE, SCHARF, TRAN, VALDERRAMA, WALLAN, WALTERS, Senator GELSNER BLOUIN (Pre-session filed.)

CHAPTER

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Prenatal, postpartum and parent education;

(b) Development of a trauma-informed and culturally specific birth plan for each pregnant adult in custody;

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

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

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

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

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

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

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

(6) For each adult in custody who is being provided transport to a hospital for labor and delivery, the department transport officer shall have a checklist of the policies to be adhered to during the transport and a copy of the birth plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed by House March 20, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate June 21, 2023

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Rob Wagner, President of Senate

Received by Governor:

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Approved:

.....M,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

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Secretary of State