



## 2019 ASSEMBLY BILL 398

September 5, 2019 - Introduced by Representatives SUBECK, CROWLEY, TUSLER, KULP, SKOWRONSKI, SARGENT, ANDERSON, BILLINGS, BROSTOFF, GOYKE, ZAMARRIPA, SPREITZER, POPE, OHNSTAD, EMERSON, STUBBS, HINTZ, L. MYERS, HAYWOOD, VINING, C. TAYLOR, SINICKI, SHANKLAND, NEUBAUER, KOLSTE, HESSELBEIN, GRUSZYNSKI, CONSIDINE, CABRERA, BOWEN, DOYLE and FIELDS, cosponsored by Senators L. TAYLOR, WANGGAARD, KOOYENGA, RISSER, JOHNSON, ERPENBACH, LARSON, RINGHAND, MILLER, SMITH, CARPENTER and BEWLEY. Referred to Committee on Corrections.

1     **AN ACT** *to create* 302.085 of the statutes; **relating to:** the treatment of a  
2             pregnant or postpartum person in prison and county jail.

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### *Analysis by the Legislative Reference Bureau*

This bill limits the use of physical restraints on pregnant and postpartum people who are in the custody of a correctional facility. Under the bill, a pregnant person may not be restrained unless the restraints are reasonably necessary for the legitimate safety and security needs of the person, correctional staff, other inmates, or the public, and any restraints used must be the least restrictive possible. In addition, the bill requires that every woman in the custody of a correctional facility be offered testing for pregnancy, and, if pregnant, be offered testing for sexually transmitted infections. The bill also requires the correctional facility where the pregnant or postpartum person is being confined to provide information related to pregnancy, labor, and the postpartum period, and to provide access to certain health services related to pregnancy, labor, and the postpartum period.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3             **SECTION 1.** 302.085 of the statutes is created to read:

**ASSEMBLY BILL 398****SECTION 1****1           302.085 Treatment of a pregnant or postpartum person. (1) DEFINITIONS.**

2           In this section:

3           (a) “Correctional facility” has the meaning given in s. 101.123 (1) (ac).

4           (b) “Doula” means a nonmedical, trained professional who provides continuous  
5           physical, emotional, and informational support during pregnancy, labor, birth, and  
6           the postpartum period.

7           (c) “Doula services” means childbirth education and support services, including  
8           emotional, physical, and informational support provided during pregnancy, labor,  
9           birth, and the postpartum period.

10          (d) “Postpartum” means the period of time following the birth of an infant to  
11          6 months after the birth.

12          (e) “Restrain” means to use a mechanical, chemical, or other device to constrain  
13          the movement of a person’s body or limbs.

14          **(2) RESTRAINING A PREGNANT PERSON.** (a) A representative of a correctional  
15          facility may not restrain a person known to be pregnant unless the representative  
16          makes an individualized determination that restraints are reasonably necessary to  
17          ensure safety and security of the person, the staff of the correctional facility, other  
18          inmates, or the public. If restraints are determined to be necessary, the restraints  
19          must be the least restrictive effective type and the most reasonable under the  
20          circumstances.

21          (b) A representative of a correctional facility may not restrain a person known  
22          to be pregnant while the person is being transported if the restraint is through the  
23          use of leg irons, waist chains or other devices that cross or otherwise touch the  
24          person’s abdomen, or handcuffs or other devices that cross or otherwise touch the  
25          person’s wrists when affixed behind the person’s back.

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1 (c) A representative of a correctional facility may not place a person known to  
2 be pregnant in solitary confinement for any punitive purpose.

3 (d) A representative of a correctional facility may restrain a person who is in  
4 labor or who has given birth in the preceding 3 days only if all of the following apply:

5 1. There is a substantial flight risk or some other extraordinary medical or  
6 security circumstance that requires restraints be used to ensure the safety and  
7 security of the person, the staff of the correctional or medical facility, other inmates,  
8 or the public.

9 2. The representative has made an individualized determination that  
10 restraints are necessary to prevent escape or ensure safety or security.

11 3. There is no objection to the use of restraints by the treating medical care  
12 provider.

13 4. The restraints used are the least restrictive effective type and are used in  
14 the least restrictive manner.

15 (e) All staff members who may come into contact with a pregnant or postpartum  
16 person at any correctional facility shall receive training on the requirements of this  
17 subsection on an annual basis.

18 **(3) TREATMENT OF A PREGNANT OR POSTPARTUM PERSON.** A correctional facility  
19 shall ensure all of the following for every person incarcerated at the facility:

20 (a) That every woman under 50 years of age is offered testing for pregnancy.

21 (b) That every pregnant person is offered testing for sexually transmitted  
22 infections, including HIV.

23 (c) That every pregnant person who is on a methadone treatment regimen be  
24 provided continuing methadone treatment.

