



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0951/1
MLJ:cjs

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, RISER, JOHNSON, ERPENBACH, LARSON, RINGHAND, MILLER, SMITH, CARPENTER and BEWLEY. Referred to Committee on Corrections.

AUTHORS SUBJECT TO CHANGE

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.

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.

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:

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

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

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

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

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

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

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

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

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

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

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

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(d) That every pregnant person and every person who has given birth in the past 6 weeks is provided appropriate educational materials and resources related to pregnancy, childbirth, breastfeeding, and parenting.

(e) That every pregnant person and every person who has given birth in the past 6 weeks has access to doula services if these services are provided by a doula without charge to the correctional facility or the incarcerated person pays for the doula services.

(f) That every pregnant person and every person who has given birth in the past 6 months has access to a mental health assessment and, if necessary, mental health treatment.

(g) That every pregnant person and every person who has given birth in the past 6 months who is determined to be suffering from a mental illness has access to evidence-based mental health treatment including psychotropic medication.

(h) That every pregnant person who is determined to be suffering from depression and every person who has given birth in the past 6 months who is determined to be suffering from postpartum depression has access to evidence-based therapeutic care for depression.

- (i) That every person who has given birth in the past 12 months whose body is producing breast milk has access to the necessary supplies and is provided an opportunity to express the breast milk as needed to maintain an active supply of breast milk.

(j) That every pregnant person and every person who has given birth in the past 6 months is advised orally and in writing of all applicable laws and policies governing an incarcerated pregnant or postpartum person.