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## FISCAL IMPACT REPORT

**SPONSOR** Maestas Barnes/ Padilla      **ORIGINAL DATE** 2/10/2017      277/aHJC/aHFI#1/  
**LAST UPDATED** 3/17/2017      **HB** aSF#1

**SHORT TITLE** Lactation Policies For Female Inmates      **SB** \_\_\_\_\_

**ANALYST** Rogers

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Potentially Moderate	Potentially Moderate	Potentially Moderate	Potentially Moderate	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 293.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Office of the Attorney General (OAG)  
Department of Health (DOH)  
New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Senate Floor Amendment #1

The Senate Floor amendment strikes the House Judiciary Committee’s addition of procedures to ensure the safety of breast milk for an infant or toddler.

#### Synopsis of House Floor Amendment #1

House Floor amendment number 1 replaces “and” with “that” on page 1, line 21. This amendment does not change the intent of the bill.

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 277 clarifies that breast milk feeding policies should be developed specifically for lactating female inmates and strikes language stating the polices shall apply to all children of a lactating inmate.

Additionally, the amendment strikes the original bill's breast milk feeding policy provisions and inserts a new paragraph, removing the original provision for same-day retrieval and delivery: "disposal and same-day storage for later retrieval and delivery to an infant or toddler by an approved person, if preferred by the lactating inmate and approved by the correctional facility administrator."

### Synopsis of Bill

House Bill 277 enacts a new statutory section to require every correctional facility (private or public jail, prison or other detention facility), by January 1, 2018, to develop and implement an infant and toddler feeding policy that promotes breastfeeding by female inmates and is based on current accepted best practices. The policy is required to include provisions for:

- Medically appropriate support and care related to cessation of lactation or weaning; and
- Human milk expression and (a) disposal; (b) storage for later retrieval and delivery to an infant or toddler by an approved person; and (c) same-day retrieval and delivery to an infant or toddler by an approved person, if preferred by the inmate and approved by the court and the correctional facility administrator.

HB 277 requires posting of the policy in all places where medical care is provided in the facility. The bill also requires the policy be routinely communicated to appropriate staff and included in the facility's new employee orientation and training.

### **FISCAL IMPLICATIONS**

NMCD explains the bill is likely to have a minimal to moderate impact, as it requires drafting and implementation of a policy and staff training for all employees who work with pregnant or lactating inmates. NMCD houses its female inmates at two of its state operate facilities, and would need to post notices at those facilities and also train its staff members working there. NMCD may also need to consult with its medical vendor or other medical personnel regarding best practices regarding breastfeeding toddlers and infants, and there could be some cost associated with this consultation.

NMCD states the bill appears to allow or at least not prohibit the department from requiring the lactating prisoner or her family to pay the costs of safely shipping the retrieved breast milk to the family, in the event that the inmate or her family chooses not to come to the facility to pick up the female inmate's collected breast milk on a daily or regular basis. Shipping the milk through the mail or a delivery service might be expensive for the inmate or her family. If the bill intends NMCD to pay for shipping, there is no appropriation to cover this cost.

NMCD may also incur costs associated with storing the gathered breast milk in a proper refrigerator until retrieved by the family member or designated person or until the milk can be properly shipped.

The AOC states there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and any attendant court proceedings. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## SIGNIFICANT ISSUES

NMCD is willing to develop a policy as outlined by this bill administratively without a bill. The department's medical provider treats and cares for pregnant and lactating female inmates, and will continue to do so with or without a law requiring the implementation of a policy containing provisions for the medical care related to cessation of lactation or weaning.

The policy developed by the NMCD should include language that it maintains its discretion to alter, limit or temporarily cease the policy or procedures regarding the collection of breast milk due to legitimate safety and security reasons (such as lockdowns, prison disturbances, the female inmate's use of the collection process to harm staff or other inmates or to try to have drugs or other contraband smuggled in, etc.).

The bill as written, if passed, requires the NMCD to implement the policy, but appears not to allow the NMCD to temporarily cease using the policy due to legitimate prison safety and security concerns. The bill as written may remove or limit the NMCD's executive, statutory authority to operate its prisons and its duty to do so in a safe and reasonable manner.

The Department of Health (DOH) states the positive health effects of breastfeeding are well recognized as breast milk is uniquely suited to the human infant's nutritional needs with properties that protect against a host of illnesses and diseases for both mothers and children. Breastfeeding has been recommended by numerous prominent organizations of health professionals because breastfeeding provides many important health, psychosocial, economic, and environmental benefits. Organizations such as the American Academy of Pediatrics all recommend that infants be breastfed for at least 12 months and be exclusively breastfed for the first 6 months.

DOH also states "the U.S. Surgeon General's 2011 Call to Action to Support Breastfeeding, Appendix B, lists the excess health risks associated with not breastfeeding, which include ear infections, eczema, diarrhea, vomiting, respiratory hospitalizations including asthma, childhood obesity, type 2 diabetes, leukemia and sudden infant death syndrome for full-term infants; necrotizing enterocolitis for pre-term infants; and breast and ovarian cancer for mothers."

Analysis from DOH explains a Committee Opinion on Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females, issued by the American College of Obstetricians and Gynecologists (ACOG) and reaffirmed in 2016, recommends that federal and state governments adopt policies to support provision of perinatal care for pregnant and postpartum incarcerated women and adolescents. In addition, ACOG recommends that incarcerated mothers who wish to breastfeed be allowed to either breastfeed their infants or express milk for delivery to the infant. If the mother expresses her milk, accommodations should be made for freezing, storing, and transporting the milk.

DOH states "if it is not an option for mother and child to be together, correctional facilities should have provisions for 1) visiting infants and 2) to allow for women in facilities without prison nurseries to maintain their milk supply. Safety and security are of utmost importance, and protocols should be established that mirror other types of tissue collection and transport. Although maintaining adequate safety is critical, correctional officers do not need to routinely be present in the room while the prisoner is either in the room breastfeeding or expressing breast

milk.”

DOH also submits the following:

Breastfeeding remains the preferred method of nourishment for all children, this is in part because non-breastfed children have a 2.6 times higher chance of experiencing abuse than breastfed children. (Strathearn L, Mamun AA, Najman JM, & O’Callaghan MJ. 2009. Does breastfeeding protect against substantiated child abuse and neglect? A 15-year cohort study. *Pediatrics*, 123(2), 483–93.).

A 2009 New York Correction Law allows a mother of a nursing child to be accompanied by her child if she is committed to a correctional facility at the time she is breastfeeding. This law also permits a child born to a committed mother to return with the mother to the correctional facility. The child may remain with the mother until one year of age if the woman is physically capable of caring for the child. (2009 N.Y. Laws, Chap. 411; SB 1290)

A 2012 study examined the breastfeeding knowledge, beliefs, and experiences of pregnant women incarcerated in New York City jails. Findings showed that breastfeeding is valued by incarcerated pregnant women and has the potential to contribute to their psychosocial well-being and self-worth as a mother. Three main themes emerged from women's collective stories about wanting to breastfeed and the challenges that they experienced. First, incarceration removes women from their familiar social and cultural context, which creates uncertainty in their breastfeeding plans. Second, incarceration and the separation from their high-risk lifestyle makes women want a new start in motherhood. Third, being pregnant and planning to breastfeed represent a new start in motherhood and gives women the opportunity to redefine their maternal identity and roles. Understanding the breastfeeding experiences and views of women at high risk for poor pregnancy outcomes and inadequate newborn childcare during periods of incarceration in local jails is important for guiding breastfeeding promotion activities in this transient and vulnerable population. Implications from the findings will be useful to correctional facilities and community providers in planning more definitive studies in similar incarcerated populations (BIRTH 39:2 June 2012)

DOH also states the population impacted by this bill is incarcerated women. According to the Sentencing Project, in 2014, the imprisonment rate for African American women (109 per 100,000) was more than twice the rate of imprisonment for white women (53 per 100,000). Hispanic women were incarcerated at 1.2 times the rate of white women. The American College of Obstetricians and Gynecologists (ACOG) states Women and adolescent females represent an increasing proportion of inmates in the US correctional system. Incarcerated women and adolescent females often come from disadvantaged environments and have high rates of chronic illness, substance abuse, and undetected health problems. Most of these women are of reproductive age and are at high risk of unintended pregnancy and sexually transmitted infections, including HIV. Understanding the needs of incarcerated women and adolescent females can help improve the provision of health care in the correctional system.

DOH explains the impact this bill may have on health equity/disparities is that the infants of incarcerated women from predominately disadvantaged environments with high rates of chronic illness, substance abuse, and undetected health problems, may have healthier outcomes, which in turn, could reduce subsequent health costs.

AOC submits the following analysis:

- 1) Section 1(B) requires the court’s approval of same-day retrieval and delivery of breast milk, if preferred by the inmate and also approved by the correctional facility administrator. It is unclear why the court would be involved in this process. The process does not involve a change in the sentence of the lactating inmate or the release of the inmate, changes that would invoke the jurisdiction of the court. The court will have jurisdiction in the matter should a controversy arise. Absent a controversy, each correctional facility will best be able to facilitate the same-day retrieval and delivery process, as best works for the facility, and as best safeguards the inmate, the breast milk recipient and the general public.
- 2) HB 277 requires an infant and toddler feeding policy to include provisions for the expression of breast milk and same-day retrieval and delivery to an infant or toddler, if preferred by the inmate and approved by the court and the correctional facility administrator. It is unclear who would petition the court for same-day retrieval and delivery and whether the inmate would be entitled to a hearing on the matter or some other court proceeding to permit the court to approve the request. There is also no guidance provided for the court to consider in deciding whether to approve or deny the request. If the court is to still be involved in the approval process (see “Significant Issue” #1, above), these details can be required to be set out in the policy.

#### **ADMINISTRATIVE IMPLICATIONS**

DOH will have to update administrative rules if this bill becomes law.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates SB 293.

#### **TECHNICAL ISSUES**

AOC explains Section 1(B) requires the court’s approval of same-day retrieval and delivery of breast milk, if preferred by the inmate and also approved by the correctional facility administrator. It is submitted that the court’s approval is unnecessary and improper where the court is without jurisdiction unless a controversy arises in the implementation of the policy. AOC suggests the following be taken into consideration:

- 1) P.2, line 7: remove the phrase “the court and”. (See “Significant Issue” #1 and “Technical Issue” #1, above.)
- 2) If the court is still to be involved in the approval process, include, within the requirements for the policy, how court approval for same-day retrieval and delivery will be sought, as well as the factors for courts to consider or weigh in granting approval or denying the request.

TR/jle/sb