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FISCAL IMPACT REPORT

ORIGINAL DATE 2/24/15
 SPONSOR Torraco LAST UPDATED 3/12/15 HB _____
 SHORT TITLE Expectant and Postpartum Prisoners Act SB 363/SPACS/aSJC
 ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to the Senate Public Affairs Committee substitute for Senate Bill 363 would remove section 2, Legislative findings and purpose. The amendment also strikes language allowing for electronic monitoring as a condition of release.

Synopsis of SPAC Substitute

The Senate Public Affairs Committee Substitute for SB 363 enacts the “Expectant and Postpartum Prisoners Act” (“EPPA”) and requires the court to take into account a woman’s pregnancy and lactation status when determining whether she is eligible for release or bond and in the computation of good time credit. The substitute bill requires a presumption to be made in favor of release for a woman who is pregnant or lactating.

Additionally, at the court’s discretion, a woman who is due to give birth may be granted release from incarceration in a prison or jail prior to birth and after birth, unless the court finds that public safety or the well-being of the woman or her child would not be best served outside of a correctional setting. The substitute requires women released pursuant to the EPPA to be placed on the least restrictive conditions of release necessary to ensure return to custody for the duration

of release. “Release” means a temporary leave of absence from incarceration, after which, the woman shall be remanded to custody to serve the duration of her sentence. The substitute bill requires the Secretary of corrections and detention administrators to develop policies for lactating prisoners to express milk for the purpose of maintaining breast milk supply.

FISCAL IMPLICATIONS

NMCD provided the following:

The NMCD appreciates that the intention of the original bill and committee substitute are to provide a cost savings mechanism for the department and other detention administrators. It does seem that diversion from incarceration pre-trial and at sentencing for suitable candidates will be a cost-saving measure for the state. However, the fiscal impact of such temporary releases once someone is already in NMCD custody remains unknown. Without appropriate funding attached to this legislation, NMCD would bear the additional costs of implementation of new policy and processes within a very limited departmental budget.

SIGNIFICANT ISSUES

AOC provided the following:

Although the SPAC substitute for SB 363 defines “release” as a temporary leave of absence from incarceration, there is no guidance in the substitute bill as to how soon before and for how long after birth a prisoner may be released. If complications develop while the woman is on release, prior to or after giving birth, the bill does not appear to include a mechanism for extending the release time.

The substitute bill states that a purpose of the EPPA is to “support the needs of newborn children and encourage family bonding.” There is no provision within the Act to require the Secretary of Corrections and the administrators of the state’s jails to develop policies to permit the incarcerated fathers of newborns to have an opportunity to visit with and/or hold their newborns in encouragement of family bonding.

NMCD stated that:

This bill places the responsibility of a new and significant authority to grant an extended furlough to an inmate already incarcerated and under supervision of NMCD. This authority may be better suited within our state’s judicial branch.

The substitute does reduce NMCD’s exposure to civil liability by giving the courts discretion to grant temporary release to a pregnant or lactating offender. Additionally, while the substitute reduces NMCD’s exposure to liability by allowing the court to consider public safety considerations presented to it by NMCD, nothing in the substitute exempts or protects NMCD or the private operators from related lawsuits. Both could and likely would be sued under New Mexico or federal law if the woman, who may not have had a history or profile demonstrating that she was a substantial public safety risk while on release, nevertheless commits a crime or otherwise harms herself or others while on temporary release.

DOH provided the following:

The positive health effects of breastfeeding are well recognized. Breast milk is uniquely suited to the human infant's nutritional needs and is a live substance with unparalleled immunological and anti-inflammatory properties that protect against a host of illnesses and diseases for both mothers and children.

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 enter colitis for pre-term infants; and breast and ovarian cancer for mothers.

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 2013, recommends that federal and state governments should adopt policies to support provision of prenatal care for pregnant and postpartum incarcerated women and adolescents that follow the guidelines of the American College of Obstetricians and Gynecologists.

The ACOG's Committee Opinion also recommends that incarcerated mothers wishing to breastfeed should be allowed to either breastfeed their infants or express milk for delivery to the infant. If the mother is to express her milk, accommodations should be made for freezing, storing, and transporting the milk. This can be difficult to facilitate and is another argument for prison nurseries or alternative sentencing of women to community-based non-institutional settings. ACOG also states it is important to avoid separating the mother from the infant. Prison nurseries or alternative sentencing of women to community-based non-institutional settings should be considered for women during the postpartum period. Correctional facilities should have provisions for visiting infants for women in facilities without prison nurseries. When adequate resources are available for prison nursery programs, women who participate show lower rates of recidivism, and their children show no adverse effects as a result of their participation. In fact, by keeping mothers and infants together, prison nursery programs have been shown to prevent foster care placement and allow for the formation of maternal-child bonds during a critical period of infant development.

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.

EC/bb/aml