
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2507 **Hearing Date:** June 26, 2018

Author: Jones-Sawyer

Version: May 25, 2018

Urgency: No

Consultant: SJ

Fiscal: Yes

Subject: *County Jails: Infant and Toddler Breast Milk Feeding Policy*

HISTORY

Source: Author

Prior Legislation: SB 1422 (Mitchell), Ch. 311, Statutes of 2016

AB 2530 (Atkins), Ch. 726, Statutes of 2012

AB 568 (Skinner), vetoed in 2011

Support: ACLU of California (if amended); American Nurses Association of California; Black Women Birthing Justice; BreastfeedLA; California Black Women's Health Project; California Breastfeeding Coalition; California Immigrant Policy Center; California Latinas for Reproductive Justice; California Medical Association; California Public Defenders Association; National Council of Jewish Women, California; National Association of Social Workers, California Chapter; National Network for Women in Prison; New Way of Life Reentry Project; several individuals

Opposition: None known

Assembly Floor Vote: 75 - 0

PURPOSE

The purpose is this bill is to require each county sheriff to develop and implement an infant and toddler breast milk feeding policy for lactating inmates detained in county jails.

Existing law requires the Board of State Community Corrections (BSCC) to establish minimum standards for state and local correctional facilities. Requires the BSCC to review those standards biennially and make any appropriate revisions. Requires the standards to include, but not be limited to, the following: health and sanitary conditions, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined in state and local correctional facilities, and personnel training. The standards include specific ones for pregnant inmates at the California Department of Corrections and Rehabilitation (CDCR) and in local adult and juvenile facilities. (Pen. Code, § 6030, subd. (a) & (b).)

Existing law requires the BSCC's standards for state and local correctional facilities to require that inmates who are received by the facility while they are pregnant be notified, orally or in writing, of and provided all of the following:

- 1) A balanced, nutritious diet approved by a doctor.
- 2) Prenatal and post partum information and health care, including, but not limited to, access to necessary vitamins as recommended by a doctor.
- 3) Information pertaining to childbirth education and infant care.
- 4) A dental cleaning while in a state facility. (Pen. Code, § 6030, subd. (e).)

Existing law requires every woman being committed to a CDCR institution to be examined mentally and physically and be given the care, training, and treatment adapted to her particular condition. (Pen. Code, § 3403.)

Existing law requires that any state prison inmate who menstruates have access to, upon request, and be allowed to use, materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system. Requires that any state prison inmate who is capable of becoming pregnant have access to, upon request, and be allowed to obtain, contraceptive counseling and their choice of birth control methods. (Pen. Code, § 3409, subd. (a).)

Existing law requires CDCR to offer and make available contraceptive and family planning services to every female inmate capable of becoming pregnant at least 60 days prior to a scheduled release date. (Pen. Code, § 3409, subd. (e).)

Existing law requires CDCR to establish a community treatment program under which women inmates sentenced to state prison who have one or more children under age six to participate. Requires the program to provide for the release of the mother and child or children to a public or private facility in the community and which will provide the best possible care for the mother and child. (Pen. Code, § 3411.)

Existing law requires that every female inmate who is pregnant and who is not eligible for participation in the community treatment program have access to complete prenatal care. Requires CDCR to establish minimum standards for pregnant inmates not placed in the community treatment program, including:

- 1) A balanced, nutritious diet approved by a doctor.
- 2) Prenatal and postpartum information and health care, including, but not limited to, access to necessary vitamins as recommended by a doctor.
- 3) Information pertaining to childbirth education and infant care.
- 4) A dental cleaning while in a state facility. (Pen. Code, § 3424.)

Existing law requires the Department of Public Health to include in its public service campaign the promotion of mothers breastfeeding their infants. (Health & Saf. Code, § 12336, subd. (a).)

This bill requires that, on or before July 1, 2019, a county sheriff or the administrator of a county jail to develop and implement an infant and toddler breast milk feeding policy for lactating inmates detained in or sentenced to a county jail that is based on currently accepted best practices.

This bill requires that the breastfeeding policy be based on currently accepted best practices.

This bill requires the breastfeeding policy include all of the following provisions:

- 1) Procedures for providing medically appropriate support and care related to the cessation of lactation or weaning.
- 2) Procedures providing for human milk expression, disposal, and same-day storage for later retrieval and delivery to an infant or toddler by an approved person, at the option of the lactating inmate and with the approval of the facility administrator.
- 3) Procedures for conditioning an inmate's participation in the program upon the inmate undergoing drug screening.

This bill requires that the breastfeeding policy be posted in all locations in the jail where medical care is provided and requires that the provisions of the policy be communicated to all staff persons who interact with or oversee pregnant or lactating inmates.

This bill provides that the above provisions on the breastfeeding policy for county jail inmates applies without regard to whether the jail is operated pursuant to a contract with a private contractor and without regard to whether the inmate has been charged with or convicted of a crime.

COMMENTS

1. Need for This Bill

According to the author:

Considering the proven health and social benefits of breastfeeding to both the mother and her child, an imprisoned mother's actions should not condemn her children to lose their rights to the benefits of breastmilk. When a child cannot access the immunity-building and nutritional benefits of breastmilk (as well as the bonding that breastfeeding promotes) because his/her mother is in a correctional facility, that child too, is sentenced to the ramifications of the imprisonment.

Allowing incarcerated mothers the opportunity to provide their child with breastmilk not only promotes the well-being of both the inmate and the child, but preserves the mother to child bond. When an incarcerated mother remains connected to her child she is less likely to experience postpartum depression, postpartum anxiety disorder, or post-traumatic stress syndrome, and in turn is less likely to return to prison.

Children born to incarcerated mothers are already at a disadvantage from birth and will face many challenges. It is important that we promote a family bond so that when the mother is released she has a higher chance of leading a productive and crime-free life.

2. Benefits of Breastfeeding

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 it provides many important health, psychosocial, economic, and environmental benefits. Organizations such as the American

Academy of Pediatrics recommend that infants be breastfed for at least 12 months and be exclusively breastfed for the first 6 months.
(<http://pediatrics.aappublications.org/content/129/3/e827>)

3. Recent Efforts Regarding Lactation Policies for Inmates

During the 2017 legislative session, New Mexico state legislators approved two bills pertaining to breast-feeding and female inmates. One of the bills, SB 277, would have allowed for the early release of lactating mothers. The other bill, SB 293, would have required prisons to adopt breastfeeding policies. Governor Martinez did not sign either of the bills. However, a state court judge subsequently ruled that the New Mexico Department of Corrections was required to let a woman incarcerated in one of the state's prisons to breastfeed her infant daughter during regular visiting hours. (<<http://www.freeabq.com/2017/06/30/breast-feeding-rulng/>> [as of Jun. 18, 2018].)

According to a recent article discussing the New Mexico legislation, "There are several precedents for this type of accommodation, including the California Department of Corrections & Rehabilitation, the Ohio Prison System, Coffee Creek Correctional Facility in Oregon, Travis County Jail in Texas, and the Washington County Jail in New York. All of these provide lactation support programs for the inmates. (<<http://nmpolitics.net/index/2017/03/breastfeeding-bills-aim-to-help-children-of-incarcerated-mothers/>> as of Jun. 18, 2018].)

The aforementioned article on the New Mexico legislation notes, "Across the country, correctional facilities have provided four types of breastfeeding support (expressed milk can be frozen and distributed to caregiver on a biweekly basis):

- 1) Pump in cell and daily breastfeeding visit: The benefits to this are less staff time for surveillance, better milk output, and better bonding between mother and child. At the same time, concerns about safety are increased because the mother is given unsupervised access to a pump, which could be repurposed.
- 2) Pump not in cell and daily breastfeeding visit: This provides more security but results in a more labor-intensive administration of the program and is likely to result in fewer pumping sessions.
- 3) Pump in cell: This does not allow for actual breastfeeding time between mother and child but does allow a mother who is separated from her child to maintain her milk supply while they are separated.
- 4) Pump not in cell: This approach provides the highest level of security." (*Id.*)

This bill is modeled after the New Mexico legislation which would have required prisons to adopt breast feeding policies, but applies to local correctional facilities.

(<https://nmlegis.gov/Sessions/17%20Regular/final/SB0293.pdf>) Some counties have already adopted policies for lactating inmates housed in their jails. For example, the San Francisco County Jail has a policy that permits female inmates to pump breast milk for their children. (<https://www.kqed.org/news/11579240/pregnant-in-jail-female-inmates-and-motherhood>)

4. Drug Testing Provision

The ACLU of California has raised a concern about the provision in the bill that requires a jail breastfeeding policy to require an inmate to undergo drug screening before the inmate is permitted to participate in the breastfeeding program. In its letter supporting this bill, the ACLU wrote: “While AB 2507 is an important step forward in ensuring that incarcerated people can exercise their lactation rights..., the bill should be amended so that the program design reflects currently accepted best practices regarding substance abuse treatment and screening.” Notably, the ACLU of California has informed this committee that the drug screening requirement in this bill is absent from existing lactation policies for the San Francisco, Santa Clara, Sonoma, and Stanislaus County jails. The author may wish to consider amending the bill to address this specific concern.

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