

Abstract for Breastfeeding Law and Policy Discussion Group at 2020 AALS Annual Meeting

Regulating Expression: Developing Correctional Facility Lactation Programs to Benefit the Health and Welfare of Inmate Mothers and Their Children

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New Mexico ranks at or near the bottom in many studies of child health and wellbeing, high school graduation and employment rates, hunger and food insecurity, and teen birth rates in the United States. Advocates for women, families, and children have employed various strategies to improve the lives of New Mexicans. In 2019, these advocates, including clinical law students in the University of New Mexico School of Law Clinical Law Programs, succeeded in its efforts that resulted in enactment of a “Breastfeeding Behind Bars” law to support pregnant and lactating inmates in state correctional facilities. I would like to discuss correctional facility lactation policy best practices.

Nationwide, the number of incarcerated women increased 700 percent between 1980 and 2014. The state of New Mexico incarcerates more women per capita than any other state. African-American women are incarcerated in New Mexico at twice the rate of white women, and Hispanic women are incarcerated at 1.2 times the rate of white women. At any one time, six to ten percent of incarcerated women are pregnant, mostly in local jails. Incarceration of young women, including women of color, has a significant and negative impact on families and children in New Mexico. Specific advocacy on behalf of inmates and their children includes a focus on pregnant inmates and lactating mothers of nursing infants.

Breastfeeding of a baby is promoted as a best practice of mothering for most infants. Studies show that there are nutritional, environmental, psychosocial and economic benefits to

breastfeeding. Human breastmilk is a uniquely beneficial source of nutrition for babies. The breastfeeding experience supports the bonding between the mother and her baby.

When a mother is incarcerated, usually the child does not join the mother in the facility, and the ability to breastfeed an infant or to otherwise provide breastmilk is generally terminated. Although there are a limited number of correctional facilities with infant nurseries nationwide, New Mexico has no facility and no law that allows a child to reside in a correctional facility.

Prior to the state law, after five years of advocacy, education, and collaboration with inmate and child advocates, the Bernalillo County Metropolitan Detention Center (MDC) adopted a lactation policy for its inmates. MDC is the state's largest facility for holding women inmates with sentences less than a year, and the state facility that holds the most women pre-arraignment, as it is near Albuquerque, the state's most populated city. Breastfeeding advocates included the Breastfeeding Task Force Project of the UNM School of Law Clinical Law Programs. Student learning outcomes supported by this project include legal research and analysis, policy drafting, negotiation, professional communication, and collaboration.

Studies show that mothers who are able to give nourishment to their babies feel involved and connected with their children, which supports the maternal bond and the relationship of the mother-infant dyad. The MDC policy allows a mother, upon intake for pre-arraignment detention or to serve a sentence, to be evaluated for eligibility for the lactation program. Women are also tested for pregnancy status in order to receive prenatal care. Women held for shorter periods pre-arraignment may express and discard milk ("pump and dump") to maintain breastmilk production and reduce risk of infection from sudden lactation termination.

Incarcerated mothers who participate in the program may express milk with an electronic pump,

and the milk may be stored and transferred to the baby's caregiver for the baby's use if indicated as appropriate by a physician. Eligible mothers may have live breastfeeding visits.

A workable correctional facility lactation program must consider security and safety of all inmates, corrections officers and infants. Policy best practices need to incorporate education for correctional officers to learn that breastmilk is not a hazardous liquid; processes for breastmilk expression, storage, and transfer; visitation protocols; medical care for and drug testing of mothers; access to lactation consultants; and education regarding weaning/termination of breastfeeding.

Participation in a lactation program may increase the likelihood that an inmate will not reoffend once released. Young women tend to discuss the importance of relations, including having parental responsibilities and avoiding offending peers, as reasons to not reoffend. Having a parental responsibility while incarcerated may support reduction in reoffense risk by the mother. Participation in a lactation program may provide women with drug use histories with motivation to stay clean, as drug testing is part of the lactation policy protocols.

Correctional systems that are not willing or able to develop comprehensive programs such as nurseries should consider developing programs to allow incarcerated lactating mothers to express breastmilk, to have that breastmilk safely stored and transported to outside of the institution for provision to their infants, during at least the first year of the children's lives. Such a program would provide health benefits to the child and mother, and perhaps reduce the rate of reoffense.

NMSA 1978, § 33-1-23

33-1-23. Correctional facilities; breastfeeding and lactation policies.

A. By January 1, 2020, every correctional facility that houses female inmates shall develop and implement a breastfeeding and lactation policy for lactating female inmates that is based on current accepted best practices. The policy shall include provisions for:

- (1) human milk expression with access to an electric breast pump, milk storage and transport or disposal;
- (2) continuation of medication-assisted addiction treatment;
- (3) breastfeeding in county and municipal detention facilities that can accommodate skin-to-skin contact visits and in all facilities operated by the corrections department and children, youth and families department; and
- (4) medically appropriate support and care related to cessation of lactation or weaning if preferred by the lactating inmate.

B. For purposes of this section, "correctional facility" means a jail, prison or other detention facility, whether operated by a government or private contractor, that is used for the confinement of adult or juvenile persons who are charged with or convicted of a violation of a law or ordinance

History: [Laws 2019, ch. 71, § 1.](#)

ANNOTATIONS

Effective dates. — Laws 2019, ch. 71 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 14, 2019, 90 days after the adjournment of the legislature.

SAMPLE COUNTY ADULT DETENTION CENTER POLICY AND PROCEDURE

CHAPTER F: DETAINEE PROGRAM

SECTION 13: BREASTFEEDING AND LACTATION

1. **REFERENCES:**

NM 2019 Senate Bill 124

2. **POLICY:**

The purpose of this policy is to establish a procedure to ensure that detainees who are lactating while incarcerated will be able to express breast milk for their infants in a manner that maintains breast milk supply, and/or safely provides breast milk for the infant.

3. **PROCEDURE**

All women who are booked and not immediately released shall be asked if they are lactating and their answers documented on the medical intake form. Within [48] hours medical staff will explain the facility lactation program to detainees who report that they are lactating.

Medication Assisted Addiction Treatment

Detainees who are lactating will be continued on medication-assisted addiction treatment, and, if prescribed by a medical provider, medication-assisted addiction treatment may be initiated.

Milk Expression

Detainees who wish to express their breast milk for storage, transport, or disposal will be placed in _____ [insert clean room] _____ that is reasonably private consistent with security considerations. The detainee will be given access to an electric breast pump with storage supplies and will be provided with sufficient time to express the milk. The frequency of detainee's milk expression will be determined by the detainee and medical staff.

Detainees who wish to express their breast milk for disposal may be given the option of using a manual pump in their cell.

Detainees may also be authorized to use a manual pump in their cell to express milk for storage and in such case will be provided with supplies and expressed milk will be collected for refrigeration within 4 hours.

Breastfeeding

Subject to medical approval, a detainee who is actively engaged in medication-assisted addiction treatment or who has had a negative drug screen may be given the opportunity to breastfeed her

child during breastfeeding visitations (two times per week) and will be subject to security check for contraband. For detainees engaged in medication-assisted addiction treatment, testing positive for buprenorphine, naltrexone, or methadone does not disqualify them from participation.

INSERT DETAIL OF HOW AND WHERE

A detainee may lose the ability to breastfeed for violation of facility rules as determined by detention administrator. Loss of contact visitation privileges does not disqualify the detainee from continuing to pump and store or dispose of breast milk.

Cessation of Lactation

Medically appropriate support and care related to cessation of lactation will be provided if preferred by the lactating detainee. If the detainee develops more than mild to moderate discomfort and/or engorgement, security staff will arrange for detainee to see medical staff. If a lactating woman is detained for less than 24 hours, medical staff will offer instruction on hand expression and/or provide a manual pump to relieve symptoms of engorgement.

Contract for participation delineating responsibilities?

Storage and Delivery of Breast Milk

1. Subject to medical approval, detainees who are actively engaged in medication assisted addiction treatment or who have a negative drug screen may be authorized to express and store her breast milk for delivery.
2. Bags of expressed milk must be sealed and labeled by the detainee with the detainee's name and the date and time the milk was expressed.
3. Expressed milk will be stored in a refrigerator in the Medical Unit and maintained at temperatures of less than 40 degrees as recommended by the CDC.
4. Temperature of each refrigerator will be monitored by digital thermometer and logged by medical staff once a day.
5. The detainee must have a person who is willing to pick up and transport the breast milk regularly and may provide to the HSA the names of up to two people who are authorized to pick up her breast milk.
6. Medical staff will confirm that the authorized individuals are willing to pick up and transport the milk.
7. Milk may be picked up no more frequently than daily and no less frequently than every 3 days. Expressed milk that is not picked up will be disposed of on the 4th day.
8. Milk pick up:
 - a. To pick up the breast milk, the authorized persons must go to the front desk and identify themselves by showing picture ID.
 - b. The person picking up the milk is responsible for bringing a cooler bag and ice packs.
 - c. Medical staff will bring the expressed milk to the front desk.

- d. The person who picks up the breast milk shall inspect each bag of breast milk, to confirm the label correctly matches the name of the detainee. The authorized person will sign a receipt accepting responsibility for the milk, and medical staff will log the transfer.
- e. If the authorized person does not pick up the milk as scheduled, detainee may be able to continue to pump and store the expressed milk. Expressed milk will be stored for up to 3 days before it is discarded.

4. RESPONSIBILITY:

The requirements and processes described in this document apply to the Health Services Administrator (HSA), health care staff, and security staff. The HSA is responsible for maintaining documentation, monitoring compliance, and ensuring that staff members are trained on this policy.

Administrator

Date

Breastfeeding Behind Bars Planning Summit Agenda
UNM School of Law, Room 2402
Tuesday, November 19, 2019
9:00a.m. - 11:00a.m.

- I. Introduction/Welcome – Professor Carol Suzuki
9:00 a.m. – 9:05 a.m.
- II. Word from Student Organization Leaders
9:05 a.m. – 9:10 a.m.
- III. Discussion of NMSA 1978, § 33-1-23 – Senator Daniel A. Ivey-Soto
9:10 a.m. – 9:20 a.m.
- IV. Further Review of NMSA 1978, § 33-1-23 – Senator Michael Padilla
9:20 a.m. – 9:30 a.m.
- V. Healthcare Perspective – Dr. Larry Leeman from UNMH
9:30 a.m. - 9:45 a.m.
- VI. Lactation Policy Models – Lissa Knudsen and Sun Vega
9:45 a.m. – 9:55 a.m.
- VII. Facilitated Panel – Facilitated discussion with Q&A. Kristen Edwards
9:55 a.m. – 10:45 a.m.
- VIII. Next Steps – Lissa Knudsen
10:45 a.m. – 10:55 a.m.
- IX. Adjournment – Closing Remarks. Kristen Edwards
10:55 a.m. – 11:00 a.m.

