

LFC Requester:	Eric Chenier
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date
Prepared: 2/24/2015
Bill No: SB 363

Sponsor: Sen. Lisa Torraco
Expectant and Postpartum
Prisoners Act

Agency Code: Attorney General's Office
S'
Person Writing
fsdfs Analysis: Clara M. Moran

Short
Title: _____

Email
Phone: 222-9027 : cmoran@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis:

The proposed committee substitute would give the judicial branch the sole authority to fashion conditions of release for lactating and expectant woman who are serving a post-conviction sentence or are awaiting trial. This substitute would create a presumption that lactating and expectant woman should be released pending trial.

The proposed committee substitute would also allow for pregnant inmates to be released before and after their expected birthing date. The exception to this is if a reviewing court determined that public safety or the well-being of the woman or her child would not be best served outside of a correctional setting. The committee substitute gives court’s broad authority in fashioning conditions of such release, but mandates that courts must apply the least restrictive means to accomplish the act’s purpose.

Finally, the committee substitute would order the DOC, as well as detention administrators, to promulgate regulations for the means and methods in which lactating mothers can express milk for the lone purpose of maintaining breast milk supply.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

Subsection 3(A) of the proposed committee substitute gives magistrate and district courts the authority to fashion the least restrictive conditions of release for pregnant and lactating women who have been recently charged with a crime and awaiting trial. The proposed committee substitute, however, allows judges the authority to compute good time credits based on a woman's pregnancy and lactation status. It is unclear if the focus of this proposal is geared toward women serving a post-conviction sentence in the DOC or women serving a sentence at a county jail.

Regarding the former, NMSA 33-2-24(L)(4)(a-n) outlines 14 types of offenses that are categorically "serious violent offenses" which are explicitly precluded from a designation that would entitle that person to good time credits. In other words, a pregnant or lactating woman serving a *prison* sentence for a serious violent offense would not be entitled to any sort of good time credit. Thus, a conflict between these two provisions exist. Moreover, judges do not compute the accumulation of earned meritorious deductions, as that function falls to DOC administrators. Further, these deductions are earned by inmates for participating in various programs, for attaining higher educational levels, or lost for engaging in disruptive, disobedient, or illegal behavior.

Regarding the latter, magistrate and district judges have broad discretion in determining whether a person sentenced to a county jail to serve a sentence is entitled to good time credit. Thus, there is no conflict in the goal of this provision.

Subsection 3(B)'s provision that a pregnant inmate "may be granted a release from incarceration in a prison or jail *prior* to the presumptive birth date of her child and *after* the birth of her child," lacks any definitive time-frame for a uniform application. Consideration should be given to include a fixed period of time for such pre-birth release and a fixed period of time for post-birth release so that judges can apply its provision in a consistent manner. This notion is further implicated when considering subsection 3(C) of the proposed committee substitute, which would count the time period that a pregnant inmate has been released pre-birth and post-birth against the total amount of her sentence.

Finally, the proposed committee substitute requires DOC and detention administrators to promulgate regulations that allow lactating inmates and detainees the means to express milk to further the creation and regulation of a milk supply. Consideration should be given to including whether "detention administrators" includes county jails.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES
Addressed above

OTHER SUBSTANTIVE ISSUES
N/A

ALTERNATIVES
N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL
Status Quo

AMENDMENTS