

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 March 12, 2015
Prepared: 2015
Bill No: SB 363S

Sponsor: Senator Lisa A. Torracco
Expectant & Postpartum
Prisoners Act

Agency Code: Attorney General's Office / 305
S'

Person Writing
fsdfs **Analysis:** Margaret McLean

Short
Title: _____

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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: SB 363S proposes a new statute regarding incarcerated women who are either pregnant or nursing. The bill seeks to accommodate and encourage women by providing for release and advocates for the benefits of breastfeeding and the mother/child bond. Another provision mandates the administrators at the Corrections Department and the State’s jails to develop policies regarding lactating women to maintain a breast milk supply; provide for sanitary storage of breast milk; and allow for breastfeeding.

No distinction is made between public and private facilities involving detention.

The committee substitute permits the court (presumably the court at the time of arraignment and setting of conditions of release or the sentencing court after a conviction) to exercise discretion for a woman who is due to give birth to be granted release prior to the presumptive birth date of the child and after the child’s birth. “Release” is defined as “a temporary leave of absence from incarceration, after which, the woman shall be remanded to custody to serve the duration of her sentence.” But the proposal also contemplates release before a sentence is imposed. This discretion involves a determination and balancing of public safety or the well-being of the woman or her child. The least restrictive conditions of release are anticipated.

FISCAL IMPLICATIONS

None.

SIGNIFICANT ISSUES

Presentence and postsentence confinement credit is to be awarded when the least restrictive conditions of release are imposed may be a topic of litigation especially because conditions of release “may include electronic monitoring.” Electronic monitoring allows for the grant of credit. It is unclear what other conditions on release may qualify.

Notification to victims is mandatory when any individual is released. The procedure for this notification is not part of the substitute proposal. For example, does the court, corrections, or detention facility notify the prosecutor for any release?

The Corrections Department is charged with the management of all inmates and providing all medical and health services. Each detention center is also charged with medical and health services for the population. One interpretation of the proposal is a modification of this authority of any correctional facility.

A second interpretation is the release of women who are pregnant or lactating--by allowing for the least restrictive condition—changes the terms and conditions of the judgment and sentence or the pretrial order. For example, Rule 5-401(C) NMRA addresses the factors to be considered in determining conditions of release. One factor is the “person’s character and physical and medical condition.” Rule 5-401(C)(3)(a). At the time of the entry of a judgment and sentence, the condition of the woman may be considered. Women are detained in facilities designated for housing women; this circumstance necessarily includes the services required for a pregnant or lactating woman.

The scope of discretion that may be exercised by the court is vague. How is public safety evaluated? How is the well-being of the woman or her child evaluated? What is the higher priority? These issues are likely to be litigated.

Is there any civil liability for the State (and respective agency) any actions of the woman while she is released pursuant to this law including any harm to herself or the child?

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 363 may conflict with the policies promulgated by the New Mexico Corrections Department. It is unknown whether CYFD has any policy regarding a child born to an incarcerated mother.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. All detention facilities will be governed by policies and procedures regarding any woman who is pregnant or breastfeeding.

AMENDMENTS

None.

/mem/3/12/2015