

Corrections (Mothers with Babies) Amendment Bill

Member's Bill

As reported from the Law and Order Committee

Commentary

Recommendation

The Law and Order Committee has examined the Corrections (Mothers with Babies) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to amend the Corrections Act 2004 to allow children under the age of 24 months to be accommodated in the prisons where their mothers are incarcerated as long as certain conditions are met. This change will bring New Zealand into line with most comparable Western jurisdictions. We consider these changes to be in the best interests of the children, and potentially beneficial to their mothers.

The bill applies to all female prisoners regardless of their security classifications, or whether or not they have been convicted or sentenced. This commentary focuses on recommendations for significant changes, and does not cover minor changes of a technical nature.

Commencement

As drafted, clause 2 states that the Act comes into force 90 days after it receives the Royal assent. We recognise that substantial changes to facilities at the three women's prisons would be required in order

to accommodate children under 24 months. For this reason we recommend amending clause 2 so that the commencement date would be set by the Governor-General by Order in Council once the new facilities have been constructed. We urge the Government to work to make the necessary improvements as soon as possible.

Purpose

The committee wishes to make it clear that the best interests of the child are the paramount consideration in the application of the provisions of this bill.

As drafted, the intent of the bill outlined is for breastfeeding and bonding to take place. We want to make sure the bill does not exclude mothers who are not breastfeeding. We therefore recommend amending the purpose clause to clarify that the object of the programme includes bonding, feeding, and maintaining continuity of care.

Approval for placement of baby with mother

We propose changes to new sections 81A and 81B, and the insertion of 81C, in order to expand and clarify provisions regarding the process and criteria for approving applications to bring a child into prison.

Eligibility

New section 81A(1) allows female prisoners to keep their children with them in prison for up to 24 months. As drafted, it does not make it clear whether only biological mothers are eligible to apply for the programme. We recommend that this section be changed to indicate that the female prisoner applying for the programme must be the child's primary caregiver, or that this is likely on her release from prison, to allow for caregivers who may not be the children's biological mothers.

Screening of applicants

We recommend the insertion into 81A(1) of provisions to require that prisoners' backgrounds be checked for previous convictions involving sexual or violent offending against children. If a prisoner is found to have such convictions she should be automatically ineligible for the programme.

We recommend that new section 81A(1) be amended so that women must agree to be screened for mental health or substance abuse issues to become eligible for the programme. We consider that the child's needs should be the primary consideration when evaluating an application for a child to stay with his or her mother in prison. For this reason it is important that women are screened for any issues that may affect their ability to take care of their children. A woman would then be able to get the help she needed for any such problem. We hope that screening for such problems in advance will mean that women will receive sufficient support in these areas while caring for their children.

Chief executive approving requests

We recommend that new section 81A(2) be amended by changing "must" to "may". As drafted new section 81A(2) requires that the chief executive of the Department of Corrections must approve a request for a mother to keep her baby with her. While we agree that the chief executive should approve a request, we recommend this is changed for drafting purposes. We have an expectation that where the criteria are met the chief executive should approve a request.

Court orders

New section 81A(2)(a)(ii) refers to the chief executive considering an application to make sure it is not inconsistent with any court orders relating to the child. We recommend this be amended so the chief executive also considers any applications or proceedings pending before the court.

Accommodation

We were advised by the Department of Corrections that significant alterations would be needed to the three women's prisons to accommodate mothers and their young children. Since it is difficult to predict how many mothers would apply to use the service we recommend that new section 81A(2) be amended so that having sufficient space available in the units is one of the criteria for approving an application.

Assessing a child's best interest

We recommend the insertion of section 82A(2A) requiring that the chief executive must take into account the principles in section 5 of the Care of Children Act 2004 when making an assessment of the

child's best interests. This would ensure that decisions made under this bill were consistent with other child welfare legislation.

Consultation

We recommend that new section 81A(3) be amended to ensure the chief executive consults with the chief executive of the department responsible for administering the Children, Young Persons, and Their Families Act 1989 on every application to the programme, to ensure that the child's best interests are preserved. As introduced, the bill requires such consultations only when there are care and protection issues.

Specialist Advice

We recommend inserting a provision into new section 81A(3) which requires the chief executive to consult with a child development specialist when deciding whether to approve an application to the programme or when considering ending the placement of a child with the mother, unless it is clear that further input is unnecessary. We believe the decision-making process would be more robust if a child development specialist were included.

Parenting agreements

Parenting agreements are a major component of this bill under new section 81B. The agreements would set out the obligations of the mother and the Department of Corrections for as long as the mother is in the programme. The agreements would also plan for any separation, foreseen or unforeseen. Although we consider that flexibility for individual circumstances is necessary for parenting agreements, we recommend that the following list of obligatory conditions be in the bill:

- The mother is responsible for the care of her child while the child is in prison.
- An alternative caregiver is specified to care for the child when the placement ends or in an emergency.
- The chief executive provides and the mother participates in parenting education programmes.
- The chief executive arranges and the mother facilitates health and well-being checks for the child, and any treatment required as a result.

- The chief executive facilitates the mother's access to any treatment or counselling required to support her in caring for her child.
- The mother agrees to participate in any treatment or counselling for identified mental health or substance abuse issues
- The mother agrees to attend any programmes specified in her management plan.
- The mother agrees to co-operate in any planned separation from the child.

It is not intended that agreements be limited to the conditions on the above list, but that the list serve as a starting point.

Outlining provisions for education, support, health-checks, and treatment allows everyone involved in a parenting agreement a foundation on which to build.

Insertion of new section

In order to accommodate some of the changes we are recommending, we propose the insertion of a new section, 81C.

Appropriate facilities

In the interests of the children who will be accommodated in prison facilities, we recommend that section 81C(1) be inserted to include facilities to support the children's development.

Feeding

We recommend the insertion of 81C(2) to include all mothers and babies and types of feeding, not only breastfeeding. One of the policy objectives behind this bill is to facilitate breastfeeding by all mothers, in accordance with the World Health Assembly's resolution on breastfeeding. The resolution recommends that children be exclusively breastfed until six months of age, with the option to continue up to 24 months. When there is no other reason to terminate the placement we expect that removing access to breastfeeding will not be used as a tool of prison management or discipline.

We recognise that breastfeeding is very important, with health benefits for both mother and baby; however, we also recognise that not all mothers choose or are able to breastfeed their babies; and we want all imprisoned mothers, breastfeeding or not, to be entitled to apply for the programme.

Treatment of prisoners

In clause 6 we recommend repealing paragraph (c) of section 203 of the Corrections Act 2004 and substituting a paragraph which allows the prescription of conditions for the care of children who visit or remain with their mothers in prison.

Consequential amendments

Clause 7 makes consequential amendments to the Corrections Regulations 2005, one of which deals with accused prisoners.

Accused prisoners

We consider it important that the bill should apply to accused as well as convicted prisoners. We therefore recommend that clause 7 be amended to include changes to regulation 186 of the Corrections Regulations 2005. Regulation 186 suggests that accused prisoners should be kept apart from other prisoners where it is practical. We consider that accused prisoners would not be disadvantaged by residing in the mothers with children unit alongside convicted prisoners.

Discretionary period

Regulation 171 of the Corrections Regulations 2005 currently provides that the period of a child's placement may be extended for up to three months beyond the current regulated period. We considered legislating for the discretionary period but were persuaded that the current arrangements are satisfactory.

Appendix

Committee process

The Corrections (Mothers with Babies) Amendment Bill was referred to the committee on 28 June 2006. The closing date for submissions was 8 September 2006. We received and considered 58 submissions from interested groups and individuals. We heard 27 submissions.

We received advice from the Department of Corrections, the Ministry of Social Development, the Ministry of Justice, and the Ministry of Health. We would like to acknowledge the quality of advice we received on this Member's bill.

Committee membership

Martin Gallagher (Chairperson)

Ron Mark (Deputy Chairperson)

David Benson-Pope (from 7 November 2007)

Chester Borrows

Hon Darren Hughes (from 7 November 2007)

Hon Luamanuvao Winnie Laban (until 7 November 2007)

Jill Pettis (until 7 November 2007)

Simon Power

Kate Wilkinson

Sue Bradford was made a non-voting member of the committee for this item of business.

Corrections (Mothers
with Babies) Amendment

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Sue Bradford

Corrections (Mothers with Babies) Amendment Bill

Member's Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Corrections (Mothers with Babies) Amendment Act **2006**.
- 2 Commencement**
This Act comes into force *(90 days after the date on which it receives the Royal assent)* on a date to be appointed by the Governor-General by Order in Council. 5
- 3 Principal Act amended**
This Act amends the Corrections Act 2004.

Struck out (unanimous)**4 Purpose**

The purpose of this Act is to amend the Corrections Act 2004 to provide that children of female prisoners be accommodated with their mothers in prisons until they meet the age of 24 months for the purpose of breast-feeding and bonding, provided that this is in the best interests of the child, and that certain other conditions are met.

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New (unanimous)**4 Purpose**

The purpose of this Act is to amend the Corrections Act 2004 to provide for the best interests of the child by enabling young children of female prisoners to be placed with their mothers in prison until they turn 24 months old, for the purposes of bonding, feeding, and maintaining continuity of care, provided that certain criteria and conditions are met.

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5 New sections 81A (and 81B) to 81C inserted

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The following sections are inserted after section 81:

“81A Request and approval for placement of (baby) child with mother**Struck out (unanimous)**

“(1) A female prisoner who gives birth to a baby, or on reception to a prison has a baby less than 24 months old, may keep the baby with her until the day after the date on which the baby turns 24 months if—

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“(a) she requests the chief executive’s approval to keep the baby; and

“(b) the chief executive approves the request.

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New (unanimous)

- “(1) A female prisoner who is the mother of a child less than 24 months old, or who is expecting a child, may request the chief executive’s approval to keep the child with her until the day after the date on which the child turns 24 months if she—
- “(a) was the child’s primary caregiver before being imprisoned or is likely to be the child’s primary caregiver on release; and 5
 - “(b) does not have a conviction for an offence involving sexual or violent offending against children; and
 - “(c) agrees to undergo screening for the purposes of identifying any mental health and substance abuse issues. 10

- “(2) The chief executive (*must*) may approve a request under **subsection (1)** if—

New (unanimous)

- “(aa) the chief executive is satisfied that the mother meets the criteria set out in **subsection (1)**; and 15
- “(a) the chief executive considers that placing the (*baby*) child with the mother—
- “(i) is in the best interests of the (*baby*) child; and
 - “(ii) is not inconsistent with any court order relating to the (*baby*) child or any application or proceeding before the court (whether pending or existing) relating to the child; and 20
- “(b) the mother enters into a parenting agreement under **section 81B** with the chief executive in relation to the (*baby’s*) child’s placement; and 25

New (unanimous)

- “(c) the chief executive is satisfied that there are appropriate facilities available to accommodate the child’s placement.

Struck out (unanimous)

“(3) If the chief executive identifies any care and protection issues in relation to the baby’s placement, the chief executive must consult the chief executive of the department responsible for administering the Children, Young Persons, and Their Families Act 1989 before making a decision under **subsection (2)**.

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New (unanimous)

“(2A) In considering whether placing the child with the mother is in the best interests of the child, the chief executive must have regard to the principles in section 5 of the Care of Children Act 2004 to the extent that those principles are relevant.

“(3) The chief executive must—

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“(a) consult the chief executive of the department responsible for administering the Children, Young Persons, and Their Families Act 1989 before deciding whether to approve a child’s placement; and

“(b) seek the advice of a child development specialist before deciding whether to approve or end a child’s placement, unless it is clear from the circumstances that it is not necessary to seek that advice.

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“(4) The chief executive may end the child’s placement (*of the baby with the mother*) if the (*manager*) chief executive considers that—

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“(a) **subsection (2)(a)(i) or (ii)** is not being met; or

“(b) the mother’s responsibilities under the parenting agreement are not being met.

Struck out (unanimous)

“(5) The chief executive must ensure that every prison in which female prisoners are imprisoned provides appropriate facilities for the accommodation of children under the age of 24 months.

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“(6) The chief executive must ensure that every child who is accommodated in a prison and is being breastfed is provided with sufficient opportunities to be breastfed.

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New (unanimous)

“(5) In this section and **sections 81B and C**, unless the context otherwise requires,—

“**child’s placement** or **placement** means the placement of a child with his or her mother in prison in accordance with this section.

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“81B Parenting agreements (and parenting education)

A parenting agreement to which **section 81A(2)(b)** relates must include, without limitation, all of the following:

“(a) (*include*) notice that the mother is responsible for the care of her (*baby*) child while the (*baby*) child is in prison:

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“(b) (*identify*) identification of an alternative caregiver who will care for the (*baby*) child when the placement ends or in an emergency:

Struck out (unanimous)

“(c) include an agreement that the chief executive will provide parenting education to the mother and that the mother will participate in that parenting education.

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New (unanimous)

“(c) the chief executive’s agreement to—

“(i) provide parenting information, education, and support to the mother; and

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“(ii) attend to arrangements for the child to receive any necessary health and well-being checks and any treatment required as a result of those checks; and

“(iii) facilitate the mother’s access to any treatment or counselling required to support the mother to care for her child:

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“(d) for the purpose of ensuring that the best interests of the child are met, the mother’s agreement to—

New (unanimous)

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| <p>“(i) attend any parenting education programmes specified; and</p> <p>“(ii) facilitate arrangements for the child to receive any necessary health and well-being checks and any treatment required as a result of those checks; and</p> <p>“(iii) participate in any treatment or counselling required to address any mental health or substance abuse issues identified; and</p> <p>“(iv) attend any programmes identified in her management plan; and</p> <p>“(v) co-operate in a planned separation from the child when the placement ends.</p> | <p>5</p> <p>10</p> |
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| <p>“81C Accommodation and feeding of children placed with their mothers</p> <p>“(1) The chief executive must ensure that every prison in which female prisoners are imprisoned provides appropriate facilities for the accommodation of children under the age of 24 months, and that those facilities support the development needs of those children.</p> <p>“(2) The chief executive must ensure that every child who is placed with his or her mother in prison is,—</p> <p> “(a) if the child is breastfed, provided sufficient opportunity to be breastfed; and</p> <p> “(b) if the child is fed by other means, provided sufficient opportunity to be fed.”</p> | <p>15</p> <p>20</p> <p>25</p> |
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6 Regulations relating to treatment of prisoners

Section 203 is amended by repealing paragraph (c) and substituting the following paragraph:

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| <p>“(c) prescribing conditions relating to the care of <i>(babies)</i> <u>children</u> of female prisoners who are allowed to remain with <u>or visit</u> their mothers in prison:”.</p> | <p>30</p> |
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Struck out (unanimous)

7 Consequential amendments and revocations

The Corrections Regulations 2005 are consequentially amended by—

- (a) revoking regulations 170, 172, and 173; and
- (b) omitting “6 months” wherever it appears in regulations 171, 175, and 178 and substituting “24 months”.

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New (unanimous)

7 Consequential amendments to Corrections Regulations 2005

- (1) This section amends the Corrections Regulations 2005.
- (2) The heading above regulation 170 is amended by omitting “*babies*” and substituting “*young children*”.
- (3) Regulations 170, 172, and 173 are revoked.
- (4) Regulations 171, 175, 177, and 178 are amended by omitting “baby’s” in each place where it appears and substituting in each case “child’s”.
- (5) The heading above regulation 175 is amended by omitting “*baby*” and substituting “*child*”.
- (6) Regulations 171, 175, and 178 are amended by omitting “6 months” in each place where it appears and substituting in each case “24 months”.
- (7) Regulations 171 and 174 to 178 are amended by omitting “baby” in each case where it appears and substituting in each case “child”.
- (8) Regulation 186 is amended by adding the following subclause:
 - “(6) This regulation does not apply to female accused prisoners who are allowed to keep their children with them in prison under **section 81A** of the Act.”

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**Corrections (Mothers with
Babies) Amendment**

Legislative history

15 June 2006

Introduction (Bill 56-1)

28 June 2006

First reading and referral to Law and Order
Committee

