

Submission on Corrections (Mothers and Babies) Amendment Bill

Position on Bill

1. ACYA wholeheartedly supports the Corrections (Mothers and Babies) Amendment Bill introduced by Sue Bradford MP.

Action for Children and Youth Aotearoa Inc

2. This submission is made by Action for Children and Youth Aotearoa Incorporated (ACYA). ACYA also intends to make an oral submission.
3. ACYA is a coalition of non-governmental organizations, families and individuals whose purpose is to promote the well-being of children and young people in Aotearoa New Zealand through:
 - a. education and advocacy on the rights of children and young people;
 - b. encouraging the government to act on the recommendations of the United Nations Committee on the Rights of the Child; and
 - c. promoting opportunities for the voice and participation of children and young people.

In 2003, ACYA produced and published *Children and Youth in Aotearoa 2003*, the New Zealand NGO Report on New Zealand's implementation of the UN Convention on the Rights of the Child (NGO Report). The NGO Report was presented to the UN Committee on the Rights of the Child in Geneva in June 2003, accompanied by a video funded by ACYA and produced by New Zealand children called *Whakarongo Mai / Listen Up*.

UNCROC (Separation of Babies from their Mothers)

4. New Zealand ratified the UN Convention on the Rights of the Child (UNCROC) in 1993. UNCROC has been ratified by more than 190 countries worldwide. Several Articles of UNCROC are relevant to the question of whether children of parents in prison should be given the opportunity to have their children with them in prison and for what period of time that opportunity should continue. In

ratifying UNCROC the New Zealand government undertook to take all legislative and administrative measures to implement the rights conferred on children by the Convention.

5. Article 9.1 UNCROC states that governments shall ensure that children shall not be separated from their parents except when competent authorities determine (subject to judicial review) that such separation is in the best interests of the child. Art 9.3 adds that children who are separated from their parents shall maintain personal relations and direct contact with both parents on a regular basis except where this is contrary to the child's best interests. Article 5 requires the government to respect the responsibilities, rights and duties of parents to provide appropriate direction and guidance for their child.

6. The UNICEF Implementation Handbook on UNCROC in relation to the application of Art 9 in respect of parents in prison comments:

“The imprisonment of parents, particularly mothers of dependent young children, is deeply problematic, because the child is being punished along with the parent. While it is argued that the punishment of offenders always has repercussions for innocent relatives, where young children are concerned the effects can be particularly catastrophic to the children and costly to the State (both immediately, in providing for the children's care, and long term, in terms of the social problems arising from early separation. One solution is to accommodate young infants together with their mothers in prison; the other is to find more constructive sanctions. Where possible, the latter course should be adopted.

7. Although babies tend to be unconcerned about where they live so long as they are with their mothers, difficulties may arise about when to separate mother and child as the child grows older.”: p135

UNCROC (Breastfeeding of babies)

8. Article 24 of UNCROC requires governments to recognise the right of the child to the highest attainable standard of health and, in particular, the need:
 - to diminish infant mortality;
 - to ensure appropriate pre-natal and post-natal health care for mothers;
 - to ensure that all segments of society and in particular parents are supported in the use of basic knowledge of child health and nutrition and the advantages of breastfeeding.

9. While UNCROC does not go as far as stating that children have an explicit right to be breastfed it does require governments to recognise the child's right to the highest attainable standard of health and there is a large body of evidence that breastfeeding contributes significantly to the health of children.

RECOMMENDATIONS

10. We believe that the Bill has been carefully drafted and support the proposed amendments for the following reasons:

Enacting provision in primary legislation

The issue of allowing babies to be with their mother in prison raises significant human rights issues both in respect of the rights of the baby and the rights of the mother. It should be in primary legislation and the Bill will achieve this by making amendments to the Corrections Act 2004.

Extending period of placement from six months to two years

Six months is too short a period both in terms of the need for the child to form and preserve a secure attachment with the mother and for the child to reap the benefits of breastfeeding. Both these factors are likely to impact significantly on the child's healthy development and future wellbeing. While there are persuasive arguments for extending the period beyond two years one must take into account the need of a two year old to be exposed a range of stimuli and experiences which a prison environment might find it difficult to provide. In our view after

two years every effort should be made to free the mother from the prison environment either by granting her home detention or parole. Unless there were suitable facilities available for children older than two years we would not support extending the period beyond the two year period provided by the Bill;

Approval to be responsibility of the chief executive

Currently approval for placement of the baby with the mother must be given by the prison manager. Prison managers are subject to competing pressures including pressures from inmates and from staff. It is appropriate that the decision should be made by the chief executive of the Department of Corrections who can take into account human rights considerations and who is likely to bring greater objectivity into decision-making.

Refusal can no longer be based on the maintenance of security and good order

Except in a genuine emergency where the health and safety of the mother or the child is at risk the need to maintain security and good order in the prison should not be grounds for refusing or withdrawing approval for the baby to be with the mother.

Parenting agreement

It is pleasing to note that the proposed amendment will ensure that the mother has access to a parenting programme.