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November 15, 2017

Sheriff Patrick Firman
Denver Sheriff Department

VIA E-MAIL

Re: Follow-up on Concerns Raised at COB Forum About the DSD's Nursing Mother Policy and Practices

Dear Sheriff Firman,

We write to thank you for attending the Citizen Oversight Board meeting on Friday, November 3rd. We appreciate your periodic updates and your willingness to address topics of concern to the board and the community. As discussed at our meeting, one such concern relates to the Denver Sheriff Department's (DSD) breastfeeding policies and practices. As you know, the Citizen Oversight Board (COB) is authorized to make policy-level recommendations.¹ With that authority, the COB requests that you revise DSD policy in order to allow nursing mothers to provide breast milk to their infants. We understand that you have re-engaged the DSD Gender Equity Committee to explore this issue in November. Because this issue was raised directly with the COB at a recent public forum, we are providing our recommendations to you in writing and making this letter available to the community.

In November 2014, a DSD deputy told a woman who was breastfeeding in the lobby of the Downtown Detention Center (DDC) that she must stop or move into the bathroom. In response, a number of breastfeeding mothers staged a "nurse-in" at the lobby of the DDC to protest.² Immediately following the incident in the lobby of the jail, the DSD released a training memo informing staff of Colorado state law, which states that "A mother may breast-feed in any place she has a right to be."³ The DSD training memo advised staff that "All public areas within DSD controlled facilities are to be considered public places where a mother has the right to be."⁴

Nearly three years later, community members are still concerned that the DSD is preventing nursing mothers from providing breast milk to their infants. At our September 21st, 2017 Quarterly Public Forum, at which you were present, a community member relayed a complaint about a breastfeeding mother of a three-week old infant. The infant had not yet switched to formula and needed to be breastfed while the mother was in DSD custody. Several community members brought the infant, and then a breast pump, to the jail, but a DSD deputy allegedly would not allow the mother to breastfeed her infant or provide the child with pumped breast milk. In response to this complaint, you stated that "this should not have happened" and assured us, and the community, that you would look into the incident.⁵ On September 26, 2017, you provided the COB with a Nursing Mothers Memorandum (the Memorandum) which you

described as “temporary in nature,” to advise staff on how to support inmates who are breastfeeding mothers while “Department Orders are being revised.”^{6,7}

The Memorandum notifies DSD staff that 10 breast pumps have been purchased for use by nursing inmates who decide to maintain their milk supply while in the custody of the DSD, and describes the process by which inmates may request and use those breast pumps. The Memorandum also states, “At this time, the Department cannot store or transport any expressed milk; all milk will need to be disposed of down a sink.” While the COB is pleased that the DSD has adopted a short-term policy, we are concerned that the Memorandum requires pumped breast milk to be disposed of rather than provided to infants. Research demonstrates that such a policy can have serious detrimental effects on nursing mothers and their babies.

There are many benefits to breastfeeding for both the mother and baby. As such, it is recommended by the American College of Obstetricians and Gynecologists (ACOG) and the World Health Organization as the preferred method for feeding newborns and infants.⁸ Breastfeeding boosts infant immunity and contributes to better overall health, development, and well-being for babies.⁹ There are numerous health benefits for mothers as well, including reduced risk of infections, ovarian cancer, and breast cancer.¹⁰ Furthermore, breast feeding can promote stronger bonds between a mother and baby—which may be seriously jeopardized when a mother is incarcerated.¹¹

Sudden weaning, which can result from a mother’s incarceration, can be physically and emotionally traumatic for both mothers and infants. The DSD’s current practice, as described in the Memorandum, acknowledges the potential for physical issues for mothers by allowing them to continue expressing milk via breast pumps while incarcerated. However, it does not address either the physical or emotional issues for the infants of detained mothers, who might experience sudden weaning, negatively impacting their health and behavior, and making them more susceptible to infections and illnesses.¹²

In 2014, the DSD attained a Triple Crown Accreditation, a rare recognition issued by the National Sheriff’s Association to sheriff departments that receive simultaneous accreditation from the Commission on the Accreditation of Law Enforcement Agencies (CALEA), the American Correctional Association’s (ACA) Commission on Accreditation for Corrections, and the National Commission on Correctional Health Care (NCCHC).¹³ The NCCHC’s mission is “to improve the quality of healthcare in jails, prisons, and juvenile confinement facilities.”¹⁴ It accomplishes this mission by establishing health care standards and accrediting complying facilities,¹⁵ whose “leaders are committed to providing a nationally accepted standard of care in health services delivery.”¹⁶

Notwithstanding the DSD’s NCCHC accreditation, the Memorandum does not adhere to NCCHC’s recommended practice. In its position statement on Women’s Health Care in Correctional Settings, the NCCHC recommends that “[g]iven the benefits of breastfeeding and breast milk, correctional facilities should make arrangements for postpartum women to either breastfeed their infants or to pump, freeze, and transport breast milk for their infants.”¹⁷

Other expert organizations that establish medical guidelines or correctional standards agree with the NCCHC. For example, the American Bar Association recommends that “[c]orrectional authorities should strive to meet the legitimate needs of prisoner mothers and their infants, including a prisoner’s desire to breastfeed her child.”¹⁸ In addition, the ACOG recommends that:

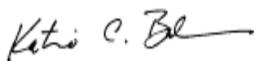
[I]ncarcerated mothers wishing to breastfeed should be allowed to either breastfeed their infants or express milk for delivery to the infant. If the mother is to express her milk, accommodations should be made for freezing, storing, and transporting the milk.¹⁹

We have provided, as appendices, four policies of sheriff’s offices or correctional agencies that allow nursing mothers in their custody to provide milk for their infants. These include:

- The Santa Clara, California Department of Correction, whose jail lactation policy allows inmates to use onsite breastfeeding or breast milk pick-up to provide breast milk to their children;²⁰
- The Nevada Department of Corrections, which allows inmates who have recently given birth to pump their breast milk, which is then stored in a freezer and can be picked up by family members at the gatehouse of the institution; and²¹
- The Travis County, Texas Sheriff’s Office, whose Correctional Complex Parental Bonding Program allows for caregivers that meet the criteria to bring infants of eligible jailed women for breastfeeding sessions.²²

Incarceration in a jail setting, where the majority of detainees are pretrial and presumed to be innocent, can have significant negative consequences on children, families, and communities, including financial, economic, and emotional effects.²³ Part of the DSD’s mission is to perform its duties “in a manner that is responsive to the needs of our diverse community.”²⁴ We therefore recommend that any final policy that is developed should permit mothers to not only express their milk; they should also be allowed to provide it to their babies. We would welcome the opportunity to assist you in the process of revising the DSD’s policy on nursing mothers, and ask that you meet with us to discuss the concerns documented in this letter before the policy is finalized. We look forward to working together to resolve this important community concern.

Sincerely,



Katina Banks, J.D., Chair
Mark Brown, Vice-Chair
Dr. Mary Davis
Francisco “Cisco” Gallardo
Pastor Paul Burleson
Molly Gallegos
Nikki Braziel, Secretary

cc: Ms. Stephanie O’Malley, Executive Director of Safety
Nicholas E. Mitchell, Independent Monitor

Enclosures

¹ D. R. M. C. Art. XVIII §2-377 (b).

² Noelle Phillips, *Breastfeeding Moms Stage Nurse-in at Denver's Downtown Jail*, THE DENVER POST (Dec. 4, 2014).

³ C.R.S. § 25-6-302 (2017).

⁴ E-mail from Operations Coordinator Melissa Ortega to all DSD Staff (Nov. 26, 2014), on file with author.

⁵ Sheriff Patrick Firman to Citizen Oversight Board Public Forum, Video Recording at 58:53 and 1:15:58 (Sept. 21, 2017).

⁶ Memorandum from Chief C. Coyle to All Staff (Sept. 25, 2017).

⁷ E-mail from Sheriff Patrick Firman to Independent Monitor Nicholas E. Mitchell and COB (Sept. 26, 2017).

⁸ The American College of Obstetricians and Gynecologists, Women's Health Care Physicians, "Breastfeeding in Underserved Women: Increasing Initiation and Continuation of Breastfeeding." "Committee Opinion, Number 570, August 2013; World Health Organization, *Global Breastfeeding Collective: A Call to Action* (2017).

⁹ Establishing Lactation Policies in Correctional Facilities- New Mexico Breastfeeding Task Force.

¹⁰ THE AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *Committee Opinion No. 570 Breastfeeding in Underserved Women: Increasing Initiation and Continuation of Breastfeeding* (2013); WORLD HEALTH ORGANIZATION, *Global Breastfeeding Collective: A Call to Action* (2017).

¹¹ J. Kennell & S. McGrath, *Starting the Process of Mother–Infant Bonding*, 94 ACTA PAEDIATRICA 775-77 (2005).

¹² ASSOCIATION OF BREASTFEEDING MOMS, RELACTATION- RESTARTING BREASTFEEDING AFTER A GAP, <https://abm.me.uk/breastfeeding-information/restarting-breastfeeding-after-a-gap/> (last visited Oct. 18, 2017).

¹³ HILLARD HEINTZE, NEW VISION, BRIGHTER FUTURE: THE DENVER SHERIFF DEPARTMENT 44 (MAY 2015); DENVER SHERIFF DEPARTMENT WEBSITE, "Triple Crown Accreditation,"

<https://www.denvergov.org/content/denvergov/en/sheriff-department/about.html> (last visited Oct. 18, 2017).

¹⁴ National Commission on Correctional Health Care Website, <http://www.ncchc.org/> (last visited Oct. 18, 2017).

¹⁵ Facilities must apply to be considered for NCCHC accreditation.

¹⁶ National Commission on Correctional Health Care Website, Accreditation Programs, <http://www.ncchc.org/accreditation-programs> (last visited Oct. 18, 2017).

¹⁷ NATIONAL COMMISSION ON CORRECTIONAL HEALTH CARE, *Position Statement, Women's Health Care in Correctional Settings* (2014).

¹⁸ AMERICAN BAR ASSOCIATION. ABA CRIMINAL JUSTICE STANDARDS ON THE TREATMENT OF PRISONERS, *Standard 23-6.9 Pregnant Prisoners and New Mothers* (2010)..

¹⁹ THE AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *Committee Opinion No. 570 Breastfeeding in Underserved Women: Increasing Initiation and Continuation of Breastfeeding* (2013).

²⁰ SANTA CLARA DEPARTMENT OF CORRECTION POLICY NUMBER 12.27, LACTATING FEMALE INMATES.

²¹ NEVADA DEPARTMENT OF CORRECTIONS ADMINISTRATIVE REGULATION 657, BREAST PUMPING PROGRAM 657.01, 657.05, and 657.06.

²² TRAVIS COUNTY CORRECTIONAL COMPLEX, *Proposed Standard Operation Procedures, Parental Bonding Program*.

²³ VERA INSTITUTE OF JUSTICE, THE HUMAN TOLL OF JAIL, <http://humantollofjail.vera.org/the-family-jail-cycle/>.

²⁴ Denver Sheriff Department Mission Statement.