**Extended Breastfeeding and the Law**

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from **Breastfeeding Abstracts**, February 2001, Volume 20, Number 3, pp. 19-20.

Misinformation about breastfeeding affects everyone in our society, including lawyers, judges, psychologists, and social workers. While there is no harm in breastfeeding past infancy and allowing a child to wean naturally, many professionals in social service agencies and family law courts are quite shocked to learn just how long a child may breastfeed. Lacking accurate information, these officials may overreact and conclude that breastfeeding a child of two, three, or four is somehow improper. As more mothers nurse longer, healthcare and lactation professionals need to be aware of legal issues surrounding extended breastfeeding, so that they can educate their counterparts in the legal and social service systems.

**Breastfeeding and the Courts**

The issue of extended breastfeeding has been raised numerous times in United States courts, in both social service agency and family law cases. There are older reports of family law cases in which the court’s custody decision was affected by the belief that the child should have been weaned at an earlier age.1 However, a more recent custody case recognized that it was not inappropriate to breastfeed past infancy and discounted the father’s claims that it was detrimental to the child ’s development.2 It is not uncommon for fathers to raise questions about extended breastfeeding to gain leverage in custody decisions, even fathers who were supportive of long-term breastfeeding prior to the divorce. This tactic has been shown to work. After all, what do judges know about breastfeeding!

Social service agencies have looked at the issue of extended breastfeeding numerous times over the past ten years, but not one social service agency has upheld any finding that extended breastfeeding constitutes abuse or neglect, or is in any way harmful to the child. In only two situations has a child been removed from the home. Several years ago, a social service agency in Colorado removed a five-year-old child because the mother was still breastfeeding, but the court ordered the child to be immediately returned to his family. Last year, in Illinois, a child was removed from the mother ’s custody to foster care for over six months because a judge issued an initial finding that the child was at risk of serious emotional harm because of not being weaned. This case received a great deal of publicity. Though the case is still in the process of being resolved, the child has been returned to his mother, and the judge has vacated the finding of neglect.

In 1992, in a highly publicized case in New York State, a mother claimed that she had lost custody of her child for a year because she was breastfeeding at age three. This mother had reported experiences of sexual arousal during breastfeeding, and authorities removed the child from the home, for fear that this mother might sexually abuse this child. Later, the social service agency in New York that took this action issued a formal statement, saying that there was more to this case than could be disclosed to the press, due to confidentiality laws. The statement also added that extended breastfeeding or even arousal during breastfeeding were not reasons for removing a child from a mother’s custody. Over the next few years, other social service agencies have also investigated cases related to extended breastfeeding, but have not removed children from their homes. These cases have been closed once officials received accurate information about extended breastfeeding and natural weaning. Breastfeeding, at any age, is not abuse or neglect.

**Information about Weaning**

Mothers who allow their child to wean naturally are being responsive to the child’s need. Contrary to the suspicions of those in our society who view breastfeeding as somehow being a sexual act, mothers who nurse older children are not satisfying pathological needs of their own.

Mothers who have breastfed past infancy rarely expected to nurse for so long, but they continue because it is so important to their child. At one time children all over the world were breastfed until they weaned naturally. It is only in our modern society that extended breastfeeding has fallen so far out of fashion that it is viewed as an abnormal act.

Breastfeeding experts do not advocate a specific age for weaning, as this is a personal decision for each mother and child. Authorities do suggest that it is best to let children wean naturally. For instance, the American Academy of Pediatrics recommends that all babies be breastfed for at least one year, or as long as mutually desirable.3 In support of this recommendation, the AAP’s statement cites a study that discusses the age of weaning among American women who practice extended breastfeeding. Weaning ages in the study extend through age 6.4

Many people are surprised to learn that experts consider 4 or 5 years to be the average age of weaning worldwide.5 Research by Dr. Katherine Dettwyler, anthropologist at Texas A&M University, argues that the natural weaning age for human beings falls between 2.5 and 6 years of age.6 An informal survey conducted by Dr. Dettwyler indicated that many more women in the United States are nursing children past infancy, and she has reports of children as old as ten years old still breastfeeding. So many women are breastfeeding past infancy that two books on the subject have chapters on nursing past age four (MOTHERING YOUR NURSING TODDLER, by Norma Jane Bumgarner, and *The Nursing Mother’s Guide to Weaning*, by Kathleen Huggins).7, 8 Many people, however, are not familiar with the idea of extended breastfeeding, since older nursing children do not nurse frequently or urgently, and most mothers nursing an older child do not do so openly in public. They may not even admit to their doctors that they are still breastfeeding. It is ironic that our society does not seem to object to children sucking their fingers, pacifiers, or bottles past infancy, but many are outraged when a child who can walk and talk is still breastfeeding. Because our culture tends to view the breast as sexual, it can be hard for people to realize that breastfeeding is the natural way to nurture children.

More and more experts and professionals are encouraging extended breastfeeding, as there is substantial evidence that health benefits continue and increase the longer the child breastfeeds. The current recommendations of the World Health Organization and UNICEF are for all mothers to breastfeed until age 2 or beyond. Studies have shown that the antibodies and immunities in a mother’s milk are more concentrated the longer she nurses, to make up for the fact that the child does not nurse as often. Recent studies also indicate that extended periods of breastfeeding offer mothers protection against breast cancer.9, 10

Children who nurse past infancy have their own developmental timetables. Many nurse for only a few minutes at bedtime, upon waking, or at nap time. Some may go days or even weeks without asking to nurse. Some wean only to resume nursing when stressful events occur in their lives, such as the birth of a sibling. When little ones get sick, most mothers find that the amount of nursing increases. Breastfeeding is primarily for comfort as children pass their first birthday, and there is nothing wrong with that. Some people may assume that if a child is nursing past infancy, it must be influenced by the mother ’s desires or wishes. To the contrary, the child is the one who determines if breastfeeding is going to continue. It is well known in the field of lactation that it is very difficult to make a child breastfeed.

**The Professional’s Responsibility**

Health professionals, social service workers, and judges and lawyers in the field of family law need to become informed about extended breastfeeding. The good intentions of a poorly informed professional can result in a false report of abuse, or even a child being placed in foster care needlessly. Personal feelings or beliefs about breastfeeding should not be allowed to affect professional judgment. Unfortunately, women have been reported to social service agencies for extended breastfeeding by the very professionals from whom they sought help. Several years ago in Florida, a mental health professional reported a client to social services for allowing a five-year-old child to try breastfeeding again after he had weaned. The father was attempting to use this incident as a weapon against the mother in a family law situation. The therapist unwittingly went along with the father’s concern, and reported that the mother-child relationship was dysfunctional. When caseworkers at the social service agency learned more about extended breastfeeding and weaning, the case was closed.

If a mother is reported to a social service agency for extended breastfeeding, or if the issue arises in a divorce or family law case, health professionals can assist by providing accurate information about the issue to everyone involved. Most of the time this sharing of information resolves the situation. If it does not, direct testimony from an expert may be needed to resolve the case in the mother’s favor.

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Page last edited 2007-10-14 09:32:41 UTC.<http://www.llli.org/ba/feb01.html>