

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 79 Excuse from Jury Service
SPONSOR(S): Civil Justice & Courts Policy Committee; Sands
TIED BILLS: None IDEN./SIM. BILLS: SB 86

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Civil Justice & Courts Policy Committee, 11 Y, 1 N, As CS, DeZego, De La Paz. Row 2: Criminal & Civil Justice Policy Council, De La Paz, Havlicak.

SUMMARY ANALYSIS

Breast milk is commonly held to be the best source of infant nutrition and has been found to have multiple health benefits for the mother as well as the child. Forty-three states, including Florida, have laws that allow women to breastfeed in any public or private location. Additionally, twelve states specifically provide for breastfeeding mothers to be either excused or postponed from serving on a jury.

Currently, Florida law provides that expecting mothers as well as any parent who is not employed full time and who has custody of a child under six years of age must be excused from jury service upon that person's request. Therefore, a mother who is breastfeeding and does not work or works part time may be excused from jury service under current law. However, a breastfeeding mother who works full time may not be excused from jury service.

This bill provides that a mother who is breastfeeding a child under two years of age must be excused from jury service upon her request.

In addition, Florida law provides that a presiding judge may use his or her discretion to excuse a practicing attorney or a practicing physician from jury service. This bill adds practicing psychologists to the list of persons a presiding judge is authorized to excuse from jury service upon his or her discretion.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

### FULL ANALYSIS I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Breastfeeding

Breast milk is commonly held to be the best source of infant nutrition, according to the Surgeon General, and numerous benefits have been shown for both the infant as well as the mother when breastfeeding occurs.<sup>1</sup> Breastfeeding is associated with lower rates of sudden infant death syndrome, childhood obesity, type 2 diabetes, and leukemia. The maternal benefits have been identified to include a reduced risk for type 2 diabetes, breast and ovarian cancers.<sup>2</sup>

Many health organizations, including the American Academy of Pediatrics, the American Academy of Family Physicians, and the American Public Health Association, officially recommend that most infants breastfeed for twelve months and exclusively for the first six months of life. The World Health Organization recommends that woman breastfeed a child up to two years of age.<sup>3</sup> An infant generally breastfeeds every two hours during the first few weeks of life.<sup>4</sup> By two months of age, an infant usually breastfeeds every four hours.<sup>5</sup>

##### Breastfeeding Laws

Forty-three states, including Florida, have laws that specifically allow women to breastfeed in any public or private location.<sup>6</sup> In addition, twenty-eight states, including Florida, exempt breastfeeding from public indecency laws, and twenty-four states have laws relating to breastfeeding in the workplace.<sup>7</sup>

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<sup>1</sup> Rear Admiral Steven K. Galson, M.D., M.P.H., *Surgeon General's Perspectives: The Status of Breastfeeding Today*, *Public Health Reports* (May-June 2009), at [www.publichealthreports.org/userfiles/124\\_3/356-358.pdf](http://www.publichealthreports.org/userfiles/124_3/356-358.pdf).

<sup>2</sup> *Id.* See Ip S, Chung M, Raman G, Chew P, Magula N, DeVine D, et al. *Breastfeeding and maternal and infant health outcomes in developed countries*, Rockville (MD): Agency for Healthcare Research and Quality (2007), at [www.ahrq.gov/downloads/pub/evidence/pdf/brfout/brfout.pdf](http://www.ahrq.gov/downloads/pub/evidence/pdf/brfout/brfout.pdf).

<sup>3</sup> See <http://www.who.int/topics/breastfeeding/en/>. Last accessed on October 14, 2009.

<sup>4</sup> See <http://life.familyeducation.com/infant/breastfeeding/50450.html>. Last accessed on October 14, 2009.

<sup>5</sup> *Id.*

<sup>6</sup> See <http://www.ncsl.org/IssuesResearch/Health/BreastfeedingStateLaws/tabid/14389/Default.aspx>. Last accessed October 7, 2009. See s. 383.015, F.S.

<sup>7</sup> *Id.*

Currently, twelve states have laws that specifically allow a breastfeeding mother to either postpone or be excused from jury service.<sup>8</sup> Other states, considered "family friendly" jury duty states, have laws that excuse or postpone jury duty for family caregivers.<sup>9</sup> While breastfeeding mothers in these states may meet the requirements to be excused from jury service, working mothers who breastfeed often do not. Florida is one of these states.

Florida provides that a person may be excused from jury service upon request if the person is an expectant mother or a parent (male or female) who is not employed full time and who has custody of a child under 6 years of age.<sup>10</sup> A breastfeeding mother who is not employed full time and has custody of a child is exempted from jury service under this statute. However, a breastfeeding mother who works full time, either inside or outside of the home, is not exempted.

While Florida law currently allows a woman to breastfeed in any private or public place<sup>11</sup>, there are no laws that require court houses to provide specific accommodations for a breastfeeding mother. Therefore, a breastfeeding mother may have difficulty finding a place to either breastfeed or express milk when serving jury service.

### Psychologists

Florida law defines the practice of psychology as the "observations, description, evaluation, interpretation, and modification of human behavior, by the use of scientific and applied psychological principles, methods, and procedures, for the purpose of describing, preventing, alleviating, or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal behavioral health and mental or psychological health." To become a licensed psychologist in Florida, a person must have a doctoral degree in psychology or the equivalent, pass the psychological licensure exam, obtain at least two years or 4,000 hours of experience, and be licensed by the Board of Psychology.<sup>12</sup>

### Jury Service

The United States Constitution as well as the Florida Constitution guarantee the right of trial by jury to a defendant in criminal cases and parties in certain types of lawsuits.<sup>13</sup> According to the Supreme Court, a jury's purpose is to "guard against the exercise of arbitrary power -- to make available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps overconditioned or biased response of the judge."<sup>14</sup> Jury service is both a "privilege and a responsibility of citizenship.... which affords an opportunity for citizens with a variety of life experiences and backgrounds to actively participate in the justice system."<sup>15</sup> In order to ensure this protection and make sure that a variety of backgrounds are represented, the selection of a jury must be from a representative cross section of the community.<sup>16</sup>

Historically, certain groups were excluded from service on a jury in Florida based on race or gender. Under the 1838 Constitution, only free white males could serve as jurors.<sup>17</sup> However, in 1908 Florida Justice James B. Whitfield wrote an opinion outlawing the blanket exclusion of African-American men

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<sup>8</sup> See <http://www.ncsl.org/IssuesResearch/Health/BreastfeedingLaws/tabid/14389/Default.aspx>. See Weimer, Douglas, *Breastfeeding and Jury Duty: State Laws, Court Rules, and Related Issues*, CRS Report for Congress, January 24, 2007, at [maloney.house.gov/documents/.../20050517\\_CRS\\_Jury\\_Duty.pdf](http://maloney.house.gov/documents/.../20050517_CRS_Jury_Duty.pdf). These states include: California, Illinois, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Montana, Nebraska, Oklahoma, Oregon and Virginia.

<sup>9</sup> *Id.* These states include in part the following: Alaska, Florida, Georgia, Illinois, New Jersey, South Carolina, Tennessee, Texas, Virginia, and Wyoming.

<sup>10</sup> Section 40.013(4), F.S.

<sup>11</sup> Section 383.015, F.S.

<sup>12</sup> Section 490.005, F. S. The Board of Psychology is located within the Department of Health.

<sup>13</sup> U.S. Const. amend. VI; Fla. Const. Art. I, §§ 16, 22.

<sup>14</sup> *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975).

<sup>15</sup> See [http://www.flcourts.org/gen\\_public/jury/lawday\\_pressrelease.shtml](http://www.flcourts.org/gen_public/jury/lawday_pressrelease.shtml). Last accessed October 16, 2009. See *Thiel v. Southern Pac. Co.*, 328 U.S. 217 (1946).

<sup>16</sup> *Id.*

<sup>17</sup> See [http://www.flcourts.org/gen\\_public/jury/lawday\\_pressrelease.shtml](http://www.flcourts.org/gen_public/jury/lawday_pressrelease.shtml). Last accessed October 16, 2009.

on Florida juries.<sup>18</sup> Florida women were subject to an absolute exclusion from jury service until 1949 after which they still had to contact the clerk of court to be included on the potential juror lists. However, in 1967 the legislature changed the law to include women on the lists, allowing women an automatic exemption if they were pregnant or had small children.<sup>19</sup>

States may, for certain compelling reasons, exclude some persons from jury service.<sup>20</sup> Currently, Florida provides that the following persons are excluded or excused from service on a jury:<sup>21</sup>

- A person who is under prosecution for any crime or has been convicted of a felony, unless his or her civil rights were restored;
- The Governor, Lieutenant Governor, Cabinet member, or Clerk of the Court;
- A full-time federal, state or local law enforcement officer;
- An interested person in any issue to be tried;
- An expectant mother upon request;
- Any parent that is not employed full time and has custody of a child under 6 years of age upon request;
- A person who reported as a perspective juror in his or her county within one year before being considered to serve again;
- A person 70 years or older upon request;
- A person responsible for the care of a person with a mental illness or physical or mental incapacity upon request.

In addition, a judge may use his or her discretion to excuse a practicing attorney, physician or a person who is physically infirm from jury service. A person may also be excused upon a showing of hardship, extreme inconvenience or public necessity.<sup>22</sup>

### **Effect of the Bill**

This bill provides that any mother who is breastfeeding a child under two years of age must be excused from jury service upon her request. In addition, this bill provides that a presiding judge may use his or her discretion to excuse a practicing psychologist from jury service.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 40.013, F.S., relating to persons disqualified or excused from jury service.

Section 2 provides an effective date of July 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None

##### **2. Expenditures:**

None

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Taylor v. Louisiana, 419 U.S. 522, 534 (1975).

<sup>21</sup> Section 40.013, F.S.

<sup>22</sup> Section 40.013(6), (7), F.S.

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

This bill may cause a minimal negative impact on the judicial workload, according to the Office of the State Courts Administrator.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

"Breastfeeding" is not defined in Florida law. According to Webster's dictionary, breastfeeding means nursing a baby at the breast.<sup>23</sup> However, The Supplemental Nutrition Program for Woman, Infants, and Children defines a breastfeeding woman as one who feeds her infant breast milk on the average of once a day.<sup>24</sup> Therefore, it is unclear if this bill applies to women who express their breast milk exclusively or only to women who nurse their children directly from the breast.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On November 3, 2009, the Civil Justice & Courts Policy Committee adopted an amendment to the bill. The amendment provides that a presiding judge may, in his or her discretion, excuse a practicing psychologist from jury service. This analysis is drafted to the bill as amended.

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<sup>23</sup> Webster's Encyclopedia Unabridged Dictionary, pg. 258 (1996).

<sup>24</sup> See [www.nal.usda.gov/wicworks/Learning\\_Center/FP/Protocols.pdf](http://www.nal.usda.gov/wicworks/Learning_Center/FP/Protocols.pdf). Last accessed October 16, 2009.