

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 86

INTRODUCER: Judiciary Committee and Senator Sobel

SUBJECT: Excuse from Jury Service

DATE: January 21, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Maclure	JU	Fav/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill provides that any mother who is breastfeeding a child under 2 years of age must be excused from jury service upon her request. This bill also adds practicing psychologists to the list of persons a presiding judge is authorized to excuse from jury service upon his or her discretion. These changes would be an expansion of the current list of reasons a person may be excused from serving on a jury.

This bill substantially amends section 40.013, Florida Statutes.

II. Present Situation:

Background on Jury Selection

To be selected for a jury pool in Florida, a person must be chosen at random from a list of names provided quarterly to the clerk of court by the Department of Highway Safety and Motor Vehicles.¹ All persons on this jury list reside in the county, are U.S citizens, are legal Florida

¹ Section 40.011, F.S.

residents, are at least 18, and have a driver's license or identification card issued by the department.² The Florida Statutes set out two processes for developing a jury venire, which is the group of persons who may be summoned to come to court. The clerk, under the supervision of the judge, can randomly select from the list a number of people necessary for a given session.³ Alternatively, the court may request authority of the Florida Supreme Court to operate a special selection process using a mechanical, electronic, or electrical device.⁴ Both methods envision random selection from the list of eligible people. The court has procedures in place to ensure that once a potential juror is selected he or she is given proper notice of the summons to ensure compliance, or face penalties administered by the court.⁵ Once these people are summoned to attend court as potential jurors, they may be put into the jury pool from which the jury in any given case will be chosen.⁶

Persons Disqualified or Excused from Jury Service

There are two opportunities when a person who has been summoned for jury service may be excused. First, when a person receives a summons for jury service, he or she has the initial opportunity to provide an excuse from a list of acceptable excuses for why he or she cannot serve. The person will send this notification back to the clerk's office. A potential juror may also raise one of the statutory excuses once the person has reported for jury service so that he or she may be excused from participating any further. The Florida Statutes provide a list of disqualifications or excuses that can be raised in order to be dismissed from jury service:

- No person who is a felon in this state shall be qualified to serve as a juror, unless restored to civil rights.
- Neither the Governor, nor Lieutenant Governor, nor any Cabinet officer, nor clerk of court, or judge shall be qualified to be a juror.
- Any full-time federal, state, or local law enforcement officer shall be excused from jury service unless such persons choose to serve.
- No person interested in any issue to be tried therein shall be a juror in any cause.
- Any expectant mother and any parent who is not employed full time and who has custody of a child under 6 years of age, upon request, shall be excused from jury service.
- A presiding judge may, in his or her discretion, excuse a practicing attorney, a practicing physician, or a person who is physically infirm from jury service.
- A person may be excused from jury service upon a showing of hardship, extreme inconvenience, or public necessity.
- A person being considered for jury service is exempt from jury service for one year from the last day of service.
- A person 70 years of age or older shall be excused from jury service upon request.

² Section 40.01, F.S. Also, a resident who is at least 18 years of age, a United States citizen, and a legal resident of Florida may indicate a desire to serve as a juror, even if his or her name does not appear on the department list, by executing an affidavit at the office of the clerk. Section 40.011, F.S.

³ Section 40.221, F.S.

⁴ Section 40.225, F.S.

⁵ Section 40.23, F.S.

⁶ Section 40.231, F.S.

- Any person who is responsible for the care of a person who, because of mental illness, mental retardation, senility, or other physical or mental incapacity, is incapable of caring for himself or herself shall be excused from jury service upon request.⁷

Florida's Breastfeeding Law

The Legislature has articulated that breastfeeding is a priority for the health of children. The Florida Statutes provide that the breastfeeding of a baby is an important and basic act of nurture which must be encouraged in the interests of maternal and child health and family values.⁸ To achieve this end, the Legislature has specified that a mother may breastfeed her baby in any location, public or private, without being subject to public indecency laws.⁹

Breastfeeding and Jury Duty

In some states, considered “family friendly” jury duty states, there exist laws that excuse or postpone jury duty for family caregivers.¹⁰ In 12 of these states, there are laws that specifically allow a breastfeeding mother to either postpone or be excused from jury service.¹¹

Florida currently does not allow a mother to be excused from jury duty solely because she is breastfeeding her child. The current law does allow for a mother who is not employed full time and is caring for a child under the age of 6 to be excused. Therefore, a breastfeeding mother who is not employed full time may be excused under the current statute because her baby is under the age of 6, but not for the fact she is breastfeeding.

Occupational Excuses from Jury Duty

Florida is one of many states that currently list occupations that may be excused from jury duty.¹² The current list of occupations that may be excused from jury duty in this state includes law enforcement officers, attorneys, and physicians.¹³

Psychologists in Florida

The Florida Statutes define 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,

⁷ Section 40.013, F.S.

⁸ Section 383.015, F.S.

⁹ Section 383.015(1), F.S.

¹⁰ These states include in part: Alaska, Florida, Illinois, New Jersey, South Carolina, Tennessee, Texas, and Wyoming. Douglas Reid Weimer, *Breastfeeding and Jury Duty: State Laws, Court Rules, and Related Issues*, 3-4 (May 17, 2005), http://maloney.house.gov/documents/olddocs/breastfeeding/20050517_CRS_Jury%20Duty.pdf (last visited January 13, 2010).

¹¹ These states include: California, Idaho, Illinois, Iowa, Kansas, Kentucky, Mississippi, Montana, Nebraska, Oklahoma, Oregon, and Virginia. National Conference of State Legislatures, *Breastfeeding Laws* (updated September 2009), <http://www.ncsl.org/IssuesResearch/Health/BreastfeedingLaws/tabid/14389/Default.aspx> (last visited January 6, 2010).

¹² Michael B. Mushlin, *Bound and Gagged: The Peculiar Predicament of Professional Jurors*, 25 YALE L. & POL'Y REV. 239, 246-247 (Spring 2007).

¹³ Section 40.013, F.S.

preventing, alleviating, or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal behavioral health and mental or psychological health.¹⁴ 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 2 years or 4,000 hours of experience, and be licensed by the Board of Psychology.¹⁵

III. Effect of Proposed Changes:

This bill provides that any mother breastfeeding a child under 2 years of age shall be excused from jury service upon request. Also, this bill provides that a presiding judge may use his or her discretion to excuse a practicing psychologist from jury service. This bill adds a permitted excuse and an additional occupation to the current statutory list of people who may be excused from jury service.

“Breastfeeding” is not defined by the bill or elsewhere in the Florida Statutes. The absence of a definition may lead to discrepancies in who will be excused. A baby can drink breast milk in different ways, including directly fed from the breast or fed breast milk that has been expressed into bottles. It may be unclear whether both methods of feeding are excusable options.

This bill takes effect on July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

¹⁴ Section 490.003(4), F.S.

¹⁵ Section 490.005, F.S.

C. Government Sector Impact:

The Florida Association of Court Clerks (FACC) stated that there will be a onetime cost that should not be significant to reprogram and reprint the juror summons to include the breastfeeding and psychologist excuses.¹⁶ The FACC, therefore, suggests that the Legislature consider changing the effective date of the bill to October 1, 2010, to allow time for the new summons to be prepared and to use up any “old” summons that clerks may have on hand. The FACC added that an October effective date would also ensure those who would be eligible to avail themselves of the new excuses would receive a revised summons, not an old summons.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unlikely that adding breastfeeding to the list of grounds upon which a person may be excused from jury service will cause the clerk of court to have to call more people into the jury pool in order to select a jury. Approximately 2.08 percent of all females, or 3.1 percent of women of roughly childbearing age, are pregnant in the United States at any given time.¹⁷ An estimated 18 percent of children in Florida born in 2006 were still breastfeeding at 1 year old.¹⁸ Therefore, it is not anticipated this bill will cause a large number of women to be excused from jury service.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on January 19, 2010:

The committee substitute adds psychologists to the list of occupations that may be excused from jury service at the discretion of the presiding judge.

- B. **Amendments:**

None.

¹⁶ Conversation with Randy Long of the Florida Association of Court Clerks, January 21, 2010.

¹⁷ Calculation based upon data from Central Intelligence Agency, *World Factbook: United States* (updated November 27, 2009) <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html> (last visited January 6, 2010). The birthrate for the United States is 13.82 births/1,000 population, and the U.S. population is 307,212,123, which means that about 4,245,671 babies were born in the United States in 2009. That equals 11,631 babies per day, and the average gestation period is 280 days, which means that at least 3,256,953 women are pregnant at any given time. There are about 156,006,721 females in the United States, and 103,129,321 women 15-64. Therefore, at least 2.08 percent of all females, or 3.1 percent of women of roughly childbearing age, are pregnant in the United States at any given time. *See also* http://www.answers.com/Q/What_percentage_of_the_female_population_is_pregnant_ar_any_one_time (last visited January 14, 2010) for method of calculation of percentage of pregnant women using population data.

¹⁸ Centers for Disease Control and Prevention (CDC), *Breastfeeding Among U.S. Children Born 1999–2006, CDC National Immunization Survey* (updated October 20, 2009), http://www.cdc.gov/breastfeeding/data/NIS_data/2006/state_any.htm (last visited January 6, 2010).

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
