

**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.)

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Prepared By: The Professional Staff of the Judiciary Committee

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BILL: SB 534

INTRODUCER: Senator Sobel

SUBJECT: Persons Excused from Jury Service

DATE: February 8, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Irwin	Cibula	JU	<b>Pre-meeting</b>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**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.<sup>1</sup> All persons on this jury list are required to be: United States citizens, legal Florida residents, at least 18 years of age, have a driver's license or identification card issued by the department, and reside in the county.<sup>2</sup> 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, may randomly select from the list a number of people

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<sup>1</sup> Section 40.011, F.S.

<sup>2</sup> 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.

necessary for a given session.<sup>3</sup> Alternatively, the court may request authority of the Florida Supreme Court to operate a special selection process using a mechanical, electronic, or electrical device.<sup>4</sup> 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 the person may face penalties imposed by the court.<sup>5</sup> 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.<sup>6</sup>

### **Persons Disqualified or Excused from Jury Service**

There are two opportunities for a person who has been summoned for jury service to 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 specify persons who are disqualified from jury service, persons whom a judge may excuse from jury service, and persons who must be excused from jury service upon request. Persons who are disqualified include:

- A person who is under prosecution for a crime, or a felon, unless the person's civil rights have been restored.
- The Governor and Lieutenant Governor, Cabinet officers, clerks of court, and judges.
- Full-time federal, state, or local law enforcement officers and investigative personnel of law enforcement agencies.
- A person interested in any issue to be tried in a case on which the person would serve as a juror.
- A person who would be serving as a juror within one year of the last day of previous jury service.

Persons who may be excused include:

- A practicing attorney, a practicing physician, or a person who is physically infirm.
- Any person upon a showing of hardship, extreme inconvenience, or public necessity.

Persons who must be excused upon request include:

- An expectant mother or parent who is not employed full time and who has custody of a child under 6 years of age.
- A person 70 years of age or older.

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<sup>3</sup> Section 40.221, F.S.

<sup>4</sup> Section 40.225, F.S.

<sup>5</sup> Section 40.23, F.S.

<sup>6</sup> Section 40.231, F.S.

- A 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.<sup>7</sup>

### **Florida's Breastfeeding Law**

The Legislature has articulated that breastfeeding is a priority for the health of children. The Florida Statutes provide that “[t]he 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.”<sup>8</sup> To achieve this end, the Legislature has specified that “[a] mother may breastfeed her baby in any location, public or private, where the mother is authorized to be.”<sup>9</sup>

### **Breastfeeding and Jury Duty**

On January 20, 2011, Surgeon General Regina Benjamin released *The Surgeon General's Call to Action to Support Breastfeeding*, which stated that “the time has come to set forth the important roles and responsibilities of clinicians, employers, communities, researchers, and government leaders and to urge us all to take on a commitment to enable mothers to meet their personal goals for breastfeeding.”<sup>10</sup> Currently, twelve states have laws or court rules that specifically allow a breastfeeding mother to either postpone or be excused from jury service.<sup>11</sup>

Florida, however, 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.<sup>12, 13</sup> 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. Additionally, under s. 40.013(6), F.S., a breastfeeding mother could be excused upon a showing of hardship, extreme inconvenience, or public necessity.

### **Occupational Excuses from Jury Duty**

Florida is one of many states that currently list occupations that authorize a person to be excused from jury duty.<sup>14</sup> A judge may excuse a person from jury duty in this state if the juror is a full-time law enforcement officer, an attorney, or a physician.<sup>15</sup>

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<sup>7</sup> Section 40.013, F.S.

<sup>8</sup> Section 383.015, F.S.

<sup>9</sup> Section 383.015(1), F.S.

<sup>10</sup> U.S. Department of Health and Human Services. *The Surgeon General's Call to Action to Support Breastfeeding*, pg v. Washington, DC: U.S. Department of Health and Human Services, Office of the Surgeon General; 2011. Available at <http://surgeongeneral.gov/topics/breastfeeding/calltoactiontosupportbreastfeeding.pdf> (last visited February 6, 2012).

<sup>11</sup> These states include: California, Idaho, Illinois, Iowa, Kansas, Kentucky, Mississippi, Montana, Nebraska, Oklahoma, Oregon, and Virginia. Additionally, Puerto Rico has similar provisions. National Conference of State Legislatures, *Breastfeeding Laws* (updated May 2011), <http://www.ncsl.org/IssuesResearch/Health/BreastfeedingLaws/tabid/14389/Default.aspx> (last visited January 31, 2012).

<sup>12</sup> Section 40.013(4), F.S.

<sup>13</sup> Florida distinguishes, *sub silentio*, between mothers who do not work full time and those mothers who do, relieving the former of the additional burden of jury service but not the latter.

<sup>14</sup> 47 AM. JUR. 2D *Jury* s. 159 (2011).

<sup>15</sup> Section 40.013, F.S.

## **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, preventing, alleviating, or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal behavioral health and mental or psychological health.”<sup>16</sup> To become a licensed psychologist in Florida, a person must have a doctoral degree in psychology or the equivalent, obtain at least 2 years or 4,000 hours of experience, pass the psychological licensure exam, and be licensed by the Department of Health.<sup>17</sup>

### **III. Effect of Proposed Changes:**

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

This bill takes effect on July 1, 2012.

### **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.

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<sup>16</sup> Section 490.003(4), F.S.

<sup>17</sup> Section 490.005, F.S.

**C. Government Sector Impact:**

The Florida Association of Court Clerks (FACC) stated that the clerks will incur a onetime cost, which should not be significant; to reprogram and reprint the juror summons to include the breastfeeding and psychologist excuses.<sup>18</sup> The FACC, therefore, suggests that the Legislature consider changing the effective date of the bill to October 1, 2012, to allow time for the new summons to be prepared and to use up any “old” summons that clerks may have on hand. An October effective date will also ensure that those who will be eligible to avail themselves of the new excuses will receive a revised summons, not an old summons.

However, the State Courts Administrator advised that this bill will have not fiscal impact on the judiciary.<sup>19</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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<sup>18</sup> E-mail from Randy Long, Florida Association of Court Clerks, to Dustin Irwin, Legislative Analyst, Senate Committee on Judiciary (January 31, 2012) (on file with the Senate Committee on Judiciary).

<sup>19</sup> Office of the State Courts Administrator, *2012 Judicial Impact Statement SB 534* (October 26, 2011) (on file with the Senate Committee on Judiciary).