



The Judiciary, State of Hawai'i

Testimony to the House Committee on Finance

The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair
The Honorable Aaron Ling Johanson, Vice Chair

Friday, February 21, 2013, 1:30 p.m. (Agenda #2)
State Capitol, Conference Room 308

by

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Bill No. and Title: House Bill No. 410, HD 1, Relating to Jury Duty

Purpose: Exempts breastfeeding mothers from jury duty for two years or when the mother is no longer breastfeeding the child, whichever occurs first. Provides that mother may be exempt for each child a mother breastfeeds.

Judiciary's Position:

The Judiciary recognizes the good intentions predicating this bill but does not support its blanket exemption of as much as two years when it has not been shown that any exemption is necessary given the Judiciary's present practices.

The Judiciary presently accommodates breastfeeding mothers and a blanket exemption simply opens the door for other exemptions so that the importance of jury duty will eventually be undermined. Moreover, the period of a two year exemption is excessive. If a person calls the jury pool and explains that they are breastfeeding or that they are the caregiver of an infant or child, they are generally excused from jury duty for the year of service. Breastfeeding mothers may easily be deferred through a simple call to the jury pool office.



The Judiciary also accommodates breastfeeding mothers who wish to express milk during the period of jury service by providing space, time and privacy for doing so. We are aware of no situation where a breastfeeding mother has been required to serve on a jury if she has expressed that service on a jury would create a personal hardship for her, nor do we know of any situations where breast feeding mothers who wished to serve were not accommodated if they expressed a need. Upon receiving a summons for jury duty, a nursing mother only needs to call the jury pool office and explain her situation. That information is made clear in the questionnaire she receives on a random basis that determines if she is eligible for jury duty. In a similar manner, if a person explains that they are undergoing chemotherapy or dialysis and serving on a jury would constitute a personal hardship, the jury pool office will provide a deferral. Legislation exempting breastfeeding mothers opens the door to future requests by other groups for automatic exemptions from jury duty, which has a negative impact on maintaining a large, diverse pool of potential jurors.

Constitutional Issues

The Sixth Amendment of the United States Constitution secures our right to an “impartial jury” and defendants are entitled to be “tried by a jury of one’s peers” representing a “cross-section of the community.” *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975). Selection of a jury from a representative cross-section of the population is critical to our justice system and is an essential component of the constitutional right to an impartial jury. The United States Supreme Court has suggested that states may exempt certain groups from jury service and withstand fair cross-section challenges by defendants. *Taylor* at 530-31. The United States Supreme Court has further permitted appropriately tailored statutes exempting potential jurors from serving would survive a sixth amendment challenge.

While it is likely that an exemption for breastfeeding mothers would pass constitutional muster, the Judiciary has previously noted concerns about carving out exemptions for different classes of people.

Concerns Previously Noted about Exemptions from Jury Duty

In 1998, then-Chief Justice Ronald T.Y. Moon convened the Hawai‘i Committee on Jury Innovations for the 21st Century, comprised of 30 judges, administrators, legislators, attorneys, and former jurors. A Sub-Committee on Juror Fees (the Committee) studied the issue of juror exemptions pursuant to House Concurrent Resolution no. 107, Session Laws of Hawai‘i 1998 and recommended that Hawaii Revised Statutes (HRS) Section 612-6, be amended by deleting all exemptions except for jurors who have served within the last year.



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In making its recommendation, the Committee found that the majority of states had two or fewer juror exemptions. At least 24 had no exemptions at all. At the present time, Hawai'i exempts elected officials; judges; physicians; dentists; members of the armed forces or militia; active members of an emergency medical services agency; persons living more than 70 miles from the court requiring jury services; and people who have served as jurors within one year; and persons who are 80 years of age or older.

The American Bar Association (ABA) recommends that, "All persons should be eligible for jury service" and the opportunity for jury service should not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation, or any other factor that discriminates against a cognizable group in the jurisdiction." In the past, the ABA has recommended that, "All automatic excuses or exemptions from jury service should be eliminated."²

Judiciary's Present Accommodations for Breastfeeding Mothers on Juries

House Bill No. 410, HD1 adds another exclusion to Hawai'i's jury exemptions. However, physical situations that may bear upon a juror's ability to serve are presently considered on a case-by-case basis without regard to the particular issue involved. Also, the statute presently requires that "[a] prospective juror **shall** [be excused] when it appears that jury duty would entail a serious personal hardship, or that for other good cause the prospective juror should be excused either temporarily or otherwise." See HRS § 612-7, emphasis added.

It is not clear why a blanket exemption is needed for breastfeeding mothers when they are accommodated on a case-by-case basis. Again, such an exemption opens the door to every other group who may consider jury duty a personal hardship for a particular reason. We believe it is best to deal with these situations as they come up and with due regard for the particular situations at hand.

It is also important to note that, just as employees are provided the opportunity to express milk in a private setting and are given time to devote to this process, breastfeeding jurors are also provided space, privacy and time to express milk while serving on a jury. If this is too cumbersome a process, and constitutes a "personal hardship" they may always bring their concerns to the presiding judge to determine if they may be exempt for this reason. They are allowed to defer jury service to a later date within the year of their jury service.

Other State Statutes Exempting Breastfeeding Mothers from Jury Duty

Twelve states and Puerto Rico exempt breastfeeding mothers from jury duty. (California, Idaho, Illinois Iowa, Kansas, Kentucky, Mississippi, Montana, Nebraska, Oklahoma, Oregon and



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Virginia.) Attached is a summary of the specific statutes for these states, as provided by the National Conference of State Legislatures (NCSL).

Most of the 12 states provide a blanket exemption for breastfeeding mothers. California has adopted a rule of court that specifically allows the mother of a breast-fed child to postpone jury duty for a period of up to one year. Also, the mother is given an option of not appearing in court to make this request. At the end of the one-year period, jury duty may be further postponed upon written request by the mother of a breast-fed child. The jury summons contains postponement information for nursing mothers so as to avoid a courthouse appearance to request postponement. Nebraska requires a nursing mother to submit a certificate from her physician to qualify for the exemption. Several states require written requests from the prospective juror.

Thank you for the opportunity to provide comments on this measure.

¹ Standards Relating to Juror Use and management, American Bar Association, Judicial Administration Division, Committee on Jury Standards, 1993, p. 3.

² Ibid p. 48



ATTACHMENT TO TESTIMONY ON H.B. 410

Statutes Exempting Breastfeeding Mothers From Jury Duty

Cal. Code of Civil Procedure § 210.5 (2000) requires the Judicial Court to adopt a standardized jury summons for use, which must include a specific reference to the rules for breastfeeding mothers. [2000 Cal. Stats., Chap. 266 \(AB 1814\)](#) created the law and directs the Judicial Council to adopt a rule of court to allow the mother of a breastfed child to postpone jury duty for a period of up to one year and that after one year, jury duty may be further postponed upon written request by the mother. See California Rules of Court, [Trial Court Rules, Rule 2.1006](#).

Idaho Code § 2-212 (2002) provides that a person who is not disqualified for jury service under [§ 2-209](#) may have jury service postponed by the court or the jury commissioner only upon a showing of undue hardship, extreme inconvenience, or public necessity, or upon a showing that the juror is a mother breastfeeding her child. ([2002 HB 497](#))

Ill. Rev. Stat. ch. 705 § 305/10.3 amends the Jury Act; provides that any mother nursing her child shall, upon her request, be excused from jury duty. ([Ill. Laws, P.A. 094-0391](#), 2005 SB 517)

Iowa Code § 607A.5 (1994) allows a woman to be excused from jury service if she submits written documentation verifying, to the court's satisfaction, that she is the mother of a breastfed child and is responsible for the daily care of the child.

Kan. Stat. Ann. § 43-158 allows a mother breastfeeding her child to be excused from jury service and allows jury service to be postponed until the mother is no longer breastfeeding the child. (2006 HB 2284)

Ky. Rev. Stat. § 29A.100 (2007) directs judges at all levels of the court to excuse women who are breastfeeding or expressing breast milk from jury service until the child is no longer nursing. ([SB 111](#))

Miss. Code Ann. § 13-5-23 (2006) provides that breastfeeding mothers may be excused from serving as jurors. ([SB 2419](#))

Mont. Code Ann. § 3-15-313 (2009) specifies that the court may excuse a person from jury service upon finding that it would entail undue hardship for the person; an excuse may be granted if the prospective juror is a breastfeeding mother. ([2009 Mont. Laws, Chap. 167, HB 372](#))



Statutes Exempting Breastfeeding Mothers From Jury Duty, continued

Neb. Rev. Stat. § 25-1601-4 (2003) states that a nursing mother is excused from jury duty until she is no longer breastfeeding and that the nursing mother must file a qualification form supported by a certificate from her physician requesting exemption. ([LB 19](#))

Okla. Stat. tit. 38, § 28 (2004) exempts mothers who are breastfeeding a baby from jury duty, upon their request. ([2004 HB 2102](#))

Or. Rev. Stat. § 10.050 (1999) excuses a woman from acting as a juror if the woman is breastfeeding a child. A request from the woman must be made in writing. ([SB 1304](#))

Va. Code Ann. § 8.01-341.1 (2005) provides that a mother who is breastfeeding a child may be exempted from jury duty upon her request. The mother need not be "necessarily and personally responsible for a child or children 16 years of age or younger requiring continuous care during normal court hours." ([2005 Chap. 195, HB 2708](#))

Source: National Conference of State Legislatures