



## *The Judiciary, State of Hawaii*

### **Testimony to the House Committee on Judiciary**

The Honorable Karl Rhoads, Chair  
The Honorable Sharon E. Har, Vice Chair

Friday, February 8, 2013, 2:00 p.m.  
State Capitol, Conference Room 325

by

Susan Pang Gochros  
Chief Staff Attorney and Department Head  
Intergovernmental and Community Relations

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

**Purpose:** Exempts breastfeeding mothers from jury duty.

### **Judiciary's Position:**

The Judiciary supports the intent of this bill but provides input as to (1) the impact of its implementation; (2) how the Judiciary is presently handling these situations; and (3) how other states address this issue.

### 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 21<sup>st</sup> 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.

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."<sup>2</sup>

#### Judiciary's Present Accommodations for Breastfeeding Mothers on Juries

House Bill No. 410 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." It is not clear why a blanket exemption is needed for breastfeeding mothers when they are accommodated on a case-by-case basis in terms of both

It is 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 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.

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

<sup>2</sup> *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



To Representative Karl Rhoads, Chair  
Representative Sharon E. Har, Vice Chair  
Members of Judiciary Committee

From Debrah Trankel, RNC, CLC, IBCLC  
President, Breastfeeding Hawaii  
State Breastfeeding Coalition

RE: HB 410 **Relating to Jury Duty**

Date and Time: Friday, February 8, 2013 2pm

On behalf of Breastfeeding Hawaii, I would like to express my support of **HB 410 Jury Duty** for Breastfeeding Women, exempting them from jury duty during the time they are breastfeeding or expressing milk for their child.

Breastfeeding Hawaii is a not for profit State organization. We represent Hawaii locally and at the National US Breastfeeding Committee in Washington, D.C. Our mission is to protect, promote and support breastfeeding in the State of Hawaii. We do this through the organization of community efforts, outreach, policy change, education, legislation and advocacy.

Only one in five children in Hawaii receives the absolute minimum of six months exclusive breastfeeding, and fewer than one in three are receiving any breast milk at twelve months as recommended by the American Academy of Pediatrics and the World Health Organization to reduce risk of obesity, diabetes, infectious disease, asthma, allergies and certain childhood cancers. Women who breastfeed their children benefit too, with lower rates of breast and ovarian cancers, metabolic syndrome and type 2 diabetes. Society benefits with lower health insurance costs and higher worker productivity.

Mother-child separation presents a serious challenge to continuing breastfeeding. It costs nothing to exempt a breastfeeding woman from jury duty, and can make a big difference in further preserving the breastfeeding relationship. A woman should never have to worry about how she is going to feed her baby or pump her milk, while required to sit in a courtroom jury box or be sequestered in jury deliberations. Presently there are no accommodations available in the Court House for breastfeeding women who are on juries.

In the United States, twelve states-California, Idaho, Illinois, Iowa, Kansas, Kentucky, Mississippi, Montana, Nebraska, Oklahoma, Oregon and Virginia, and the territory of Puerto Rico have laws that exempt breastfeeding women from jury duty.

Breastfeeding Hawaii believes in supporting breastfeeding women to continue to breastfeed and/or provide breastmilk for their infant. We realize a mother may chose to perform her civic responsibly but if she cannot due the need to be with her infant to breastfeed or provide milk for the baby, she needs to be provided this exemption. Also, we suggest that documentation of a woman breastfeeding could easily be verified from the Pediatrician or other health care provider caring for the infant.

Accordingly, we encourage this Committee to favorably pass on this bill, exempting breastfeeding women from jury duty toward final legislation.

Thank you for this opportunity to share our viewpoint on this issue.

Debrah Trankel, RNC, BSN, CLC, IBCLC  
President, Breastfeeding Hawaii  
State Breastfeeding Coalition

**American Congress of Obstetricians and Gynecologists  
District VIII, Hawaii (Guam & American Samoa) Section**

Lori Kamemoto, MD, MPH, FACOG, Chair  
1319 Punahou Street, Suite 990  
Honolulu, HI 96826



**February 8, 2013-Friday  
2:00 PM  
Conference Room 325  
State Capitol**

**To: Representative Rhoads, Chair  
Representative Har, Vice Chair  
House Committee on Judiciary**

**From: Lori Kamemoto, MD, MPH, Chair  
Greigh Hirata, MD, Vice Chair  
American Congress of Obstetricians and Gynecologists, Hawaii Section**

**Re: HB 410, Relating to Jury Duty**

**Position: Strongly Support**

Dear Chair Rhoads, Vice Chair Har, and Judiciary Committee Members:

The American Congress of Obstetricians and Gynecologists (ACOG), Hawaii Section, strongly supports HB410, exempting breastfeeding women from jury duty. ACOG strongly encourages breastfeeding for all women, and supports this bill.

Research performed in the United States and in other countries demonstrates that breastfeeding provides benefits to infants, women, families and society as a whole. In 1971, U.S. breastfeeding rates were only 24.7%. According to the latest data available from the Centers for Disease Control and Prevention (CDC), breastfeeding rates continue to rise and breastfeeding initiation was 76.9% in 2009. In 2009, breastfeeding at 6 months was 47.2%, and 25.5% at 12 months. [Breastfeeding Report Card-United States, 2012. CDC. <http://www.cdc.gov/breastfeeding/data/reportcard.htm>]

Although the most recent information by state available from the CDC (2008) shows that 85.1% of new mothers ever breastfed and 51.1% are still breastfeeding at 6 months (Breastfeeding Report Card 2012, United States: Outcome Indicators. CDC. <http://www.cdc.gov/breastfeeding/data/reportcard2.htm>), all women and infants can benefit from breastfeeding for at least 6 months after birth.



With few medical exceptions, nearly all women are able to breastfeed. The American Congress of Obstetricians and Gynecologists strongly supports breastfeeding and urges health care professionals caring for women and their infants, hospitals, and employers to support women in choosing to breastfeed their infants. All should work to facilitate the continuation of breastfeeding in the workplace and public facilities. (ACOG Committee Opinion #361)

Exemption from jury duty for breastfeeding mothers will allow women to continue to breastfeed their infants without the worry of availability of breastfeeding facilities, breast pumps, and time for feeding or pumping during jury duty.

Hawaii ACOG strongly supports HB410 that will result in avoiding the interruption or stopping of breastfeeding caused by jury duty, and allow the proven benefits of breastfeeding to continue.

Thank you for the opportunity to submit this testimony.

**har2-Vincent**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 07, 2013 8:48 PM  
**To:** JUDtestimony  
**Cc:** sypager@hawaii.edu  
**Subject:** Submitted testimony for HB410 on Feb 8, 2013 14:00PM

**HB410**

Submitted on: 2/7/2013

Testimony for JUD on Feb 8, 2013 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sylvia R.Pager, MD,MS. IBCLC	Amer.Acad. of Pediatrics, Hawaii	Support	No

Comments: Breastfeeding must be supported by our whole community as the way babies were born to be fed. Mothers must be helped to succeed for a longer period of time than they currently do. We can help in this way, as in many others, and must. Please support this bill. Mahalo, Sylvia R. Pager, MD, IBCLC, FABM, FAAP. Pediatrics, Breastfeeding Medicine.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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February 8, 2013

TO: Chair Karl Rhoads  
Vice-Chair Sharon Har  
House Committee on Judiciary

FROM: Deborah Zysman  
Good Beginnings Alliance

RE: **Support for HB 410:** Relating to Jury Duty

The Good Beginnings Alliance **supports HB 410**, which seeks to improve the health of Hawaii's mothers and babies by exempting breastfeeding mothers from jury duty. The Good Beginnings Alliance (GBA) is a policy and advocacy organization focused on ensuring that Hawaii's young children are healthy, safe, and ready for school. We strive to support our stakeholder community to this end, as well as provide relevant information to our families and fellow advocate community.

New mothers are sometimes faced with difficult choices when returning to the workplace, including the ability to continue breastfeeding. The health benefits of breast milk for both infants and mothers have long been established. According to the US Department of Health and Human Services Office on Women's Health, breastfeeding can help improve an infant's immune system, protecting him or her from illness – including asthma, obesity, diabetes, childhood leukemia, and respiratory infections. Mothers also benefit from breastfeeding, as it lowers the risk of breast and ovarian cancer, type 2 diabetes, and reduces post-partum depression. HB 410 contributes further to promoting the health of infants and mothers by exempting breastfeeding mothers from jury duty.

Should Hawaii approve this measure, it would join twelve other states that specifically provide for the exemption of breastfeeding mothers from jury duty, including California, Idaho, Illinois, Iowa, Kansas, Kentucky, Mississippi, Montana, Nebraska, Oklahoma, Oregon and Virginia.

Thank you for the opportunity to submit testimony in support of HB 1402.

## har2-Vincent

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 08, 2013 2:41 AM  
**To:** JUDtestimony  
**Cc:** annsfreed@gmail.com  
**Subject:** Submitted testimony for HB410 on Feb 8, 2013 14:00PM

### **HB410**

Submitted on: 2/8/2013

Testimony for JUD on Feb 8, 2013 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ann S. Freed	Hawai`i Women's Coalition	Support	No

Comments: The Hawai`i Women's Coalition is in strong support of this measure. Jury duty is burdensome to breastfeeding mothers, who may have to spend hours or days serving on a jury. The major difficulties may include the lack of access to a clean, private space to express breast milk, lack of access to electric outlets needed to operate a breast pump, and the inability to take regular and long enough breaks to express breast milk. Granting an exemption is an easy, no cost option that both assists new mothers and allows them to participate in this important civic duty at a later time. This is one area where women are in fact different from men. Mahalo nui for hearing the bill. Ann S. Freed Co-Chair, Hawai`i Women's Coalition 808-623-5676

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**har2-Vincent**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 08, 2013 7:58 AM  
**To:** JUDtestimony  
**Cc:** Catherine.a.betts@hawaii.gov  
**Subject:** Submitted testimony for HB410 on Feb 8, 2013 14:00PM

**HB410**

Submitted on: 2/8/2013

Testimony for JUD on Feb 8, 2013 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cathy Betts	Hawaii State Commission on the Status of Women	Support	No

Comments: The Hawaii State Commission on the Status of Women strongly supports this measure and requests that this Committee pass HB 410. Mahalo.

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1350 S. King Street • Suite 309 • Honolulu, Hawaii 96814 • [www.pphi.org](http://www.pphi.org) • Phone: 808-589-1156 • Fax: 808-589-1404  
February 7, 2013

**Testimony in Support: HB 410**

**To:** Chair Karl Rhoads, Vice Chair Sharon Har, and Members of the House Committee on Judiciary  
**From:** Katie Reardon Polidoro, Director of Government Relations & Public Affairs, Planned Parenthood of Hawaii  
**Re:** Testimony in Support of HB 410, Relating to Jury Duty

Thank you for hearing HB 410. Planned Parenthood of Hawaii (PPHI) supports this bill, which would excuse breastfeeding mothers from serving on juries.

The health benefits of breast milk for both infants and mothers have long been established. According to the US Department of Health and Human Services Office on Women's Health, breastfeeding can help improve an infant's immune system, protecting her from germs and illness. It may also prevent illness such as ear infections, stomach viruses, asthma, obesity, types 1 and 2 diabetes, childhood leukemia, and some respiratory infections.<sup>1</sup> Mothers also benefit from breastfeeding, as it lowers the risk of breast and ovarian cancer, type 2 diabetes, and reduces post partum depression.<sup>2</sup>

Jury duty is burdensome to breastfeeding mothers, who may have to spend hours or days serving on a jury. The major difficulties may include the lack of access to a clean, private space to express breast milk, lack of access to electric outlets needed to operate a breast pump, and the inability to take regular and long enough breaks to express breast milk. Granting an exemption is an easy, no cost option that both assists new mothers and allows them to participate in this important civic duty at a later time.

Accordingly, we support this measure and ask this Committee to pass it. Mahalo.

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<sup>1</sup> US Dept. of Health and Human Services, Office of Women's Health, *Breastfeeding Fact Sheet*, <http://www.womenshealth.gov/publications/our-publications/fact-sheet/breastfeeding.cfm#a>

<sup>2</sup> Id.