



# Breastfeeding and Jury Duty: State Laws, Court Rules, and Related Issues

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## Summary

The increasing popularity of breastfeeding has focused attention on how the law facilitates or discourages the practice. One issue that has arisen involves breastfeeding mothers and jury duty, and whether a breastfeeding mother may receive an excuse or deferral from compulsory jury duty.

At the present time there is no federal legislation on the subject, although Congress has considered and adopted other legislation concerning certain breastfeeding issues.

By contrast, several states have enacted legislation to excuse or defer jury duty for breastfeeding mothers, either specifically or more generally under “family friendly” jury duty legislation. “Family friendly” jury legislation varies in scope, but it generally, though not always, is sufficiently expansive to cover breastfeeding mothers.

Court rules concerning breastfeeding mothers and jury duty vary widely. California has adopted a uniform statewide rule. However, federal district courts have not adopted standard rules or practices. Likewise, state and local courts may have no specific rules, or very different rules on breastfeeding mothers and jury duty.

The fact that a state, a court system, or a single court does not have a law, rule, or formally written procedure does not necessarily mean that a breastfeeding mother will be compelled to serve on a jury. It appears that a general “medical exception” from jury duty may be applicable to breastfeeding mothers in some instances, and local practice and custom may influence an excuse or deferral from jury duty. It appears that many of the decisions concerning a nursing mother’s excuse or deferral from jury duty are handled on a case-by-case basis by the individual courts.

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## Introduction

Since 1993, many states have enacted laws relating to breastfeeding.<sup>1</sup> Currently, forty-three states and Puerto Rico have enacted some form of breastfeeding legislation, which most commonly addresses breastfeeding in the workplace and exempting nursing mothers from laws dealing with indecent exposure and/or criminal behavior.<sup>2</sup>

Additionally, some states have laws or rules that more directly bear on the obligation of breastfeeding mothers to serve on juries. This regulation of jury service generally has taken one of three approaches:

- Some states have enacted statutes that expressly excuse or defer jury service. States with this type of law include California, Idaho, Illinois, Iowa, Kansas, Minnesota, Mississippi, Nebraska, Oklahoma, Oregon, and Virginia. These laws are cited and summarized below. Additionally, Wyoming is considering legislation to defer or excuse jury duty.
- Another state legislative development is the enactment of “family friendly” jury duty legislation that permits parents who care for a young child on a full time basis, or who are caretakers of an elderly or disabled relative, to have jury service deferred or excused upon their request. Usually, breastfeeding mothers fall with the coverage of these statutes, although the statutes vary, and may not be applicable under every circumstance. Currently, twelve states—Alaska, Colorado, Florida, Georgia, Illinois, Massachusetts, New Jersey, South Carolina, Tennessee, Texas, Virginia, and Wyoming have some form of “family friendly jury duty legislation.”<sup>3</sup> (The laws of Colorado and Massachusetts probably are not applicable to the excuse or deferral of breastfeeding mothers from jury duty.)
- California has adopted a state-wide court rule which uniformly deals with breastfeeding and jury service. In addition, many individual courts—federal and state—have adopted rules to deal with this situation.

Even if a state has neither a specific statute dealing with jury service and breastfeeding, a “family friendly” statute, nor a statewide court rule, it does not necessarily mean that a nursing mother will be required to perform jury duty. Individual court rules or custom, community practice, or other circumstances may permit an excuse or a deferral from jury service for a nursing mother. In the absence of a state law or court rule providing a specific exception for breastfeeding, the nursing mother may or may not be excused on the basis of a general “medical” needs exception.<sup>4</sup> On the other hand, research has not found any court that permits a mother serving on a jury to

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<sup>1</sup> Accommodating breastfeeding mothers is an issue primarily addressed at the state level. At the same time, Congress has established programs to encourage breastfeeding. Congress also has affirmed the right of a nursing mother to breastfeed on federal property or in federal buildings, if the mother and child are authorized to be at that location. Congress considered legislation in the 109<sup>th</sup> Congress to promote breastfeeding and it is anticipated that similar legislation will be reintroduced in the 110<sup>th</sup> Congress. See CRS Report RL32908, *Breastfeeding: Federal Legislation*, by (name redacted).

<sup>2</sup> See CRS Report RL31633, *Summary of State Breastfeeding Laws and Related Issues*, by (name redacted).

<sup>3</sup> It should be noted that Illinois and Virginia have specific statutes for excusing or deferring jury duty, as well as “family friendly” jury duty legislation.

<sup>4</sup> See <http://www.familyfriendlyjuryduty.org> for background and statistics on breastfeeding mothers and jury duty and related issues.

have her child present in the court room or the jury room, or to breastfeed during court proceedings or jury deliberations.<sup>5</sup>

## **State Laws Permitting Breastfeeding Mothers to have Jury Duty Excused or Postponed**

At the present time, eleven states have enacted laws which specifically allow a breastfeeding mother to either postpone or be excused from jury duty. The laws vary significantly in their language and scope. Certain states permit the mother to be excused from jury duty and other states permit the mother to postpone jury duty. The laws are cited to and are summarized below.

### **California**

*Cal. Civ. Proc. Code* § 210.5 (2006) requires that the “standardized jury summons shall include a specific reference to the rules for breast-feeding mothers.” This rule, discussed below, permits the mother of a breastfed child to postpone jury duty for one year and eliminates the requirement for the mother to appear in court to request a postponement.

### **Idaho**

*Idaho Code* § 2-212(3) (*Michie 2006*) provides that a nursing mother may have jury service postponed “upon a showing that the juror is a mother breastfeeding her child.”

### **Illinois**

*705 Ill. Comp. Stat. Ann. 305/10.3 (West 2006)* provides that “any mother nursing her child shall, upon request, be excused from jury service.”

### **Iowa**

*Iowa Code Ann. § 607A.5 (West 2006)* permits a mother who is breastfeeding and who is responsible for the daily care of the child and is not regularly employed to be excused from serving on a jury.

### **Kansas**

*K.S.A. 43-158 (2006)* provides that a mother’s jury service shall be postponed until she is no longer breastfeeding the child.

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<sup>5</sup> Likewise, a breastfeeding mother on a jury is expected to be present for the entire trial. She may not be excused during the course of the trial for breastfeeding or other related activities.

## **Minnesota**

2000 *Minn. Laws Ch. 269*<sup>6</sup> allows a nursing mother, upon request, to be excused from jury service if she is not employed outside of her home and if she is responsible for the daily care of the child.

## **Mississippi**

*Miss. Code Ann. § 13-5-23(d)* (2006) provides that a juror may be excused when “the potential juror is a breast-feeding mother.”

## **Nebraska**

*Neb. Rev. Stat. § 25-1601(1), (4)* (2006) provides that a nursing mother shall be excused from jury service until she is no longer nursing her child by making such request to the court at the time the jury qualification form is filed with the jury commissioner and including with the request a physician’s certificate in support of her request. The jury commissioner shall mail the mother’s notification form to be completed and returned to the jury commissioner by the mother when she is no longer nursing the child.

## **Oklahoma**

*Okla. Stat. tit. 38, § 28(D)* (2006) provides that breastfeeding mothers may request to be exempted from service as jurors.

## **Oregon**

*Or. Rev. Stat. §§ 10.050(4)* (2006) permits a breastfeeding woman to be excused from acting as a juror, upon the approval of a written request.

## **Virginia**

*Va. Code Ann. § 8.01-341.1(8)* (2006) provides an exemption for jury service, upon request, for “any mother who is breast-feeding a child.”

## **State Laws Providing a General Exception for Family Caregivers: “Family Friendly Jury Duty Legislation”**

Some state statutes excuse or postpone jury duty for family caregivers. While they vary, some of these laws may apply to breastfeeding mothers. They are cited and summarized below. In addition

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<sup>6</sup> Provision is not codified at this time.

to the laws which are discussed below, two other states—Colorado and Massachusetts—have “family friendly jury duty legislation” that do not appear to accommodate breastfeeding activities.<sup>7</sup>

## **Alaska**

*Alaska Stat. § 09.20.030(a) (2007)* exempts a person from service as a juror upon showing that the health or proper care of the person’s family makes it necessary for the person to be excused.

## **Florida**

*Fla. Stat. Ann. § 40.013(4) (2006)* provides that an expectant mother or a parent who is not employed full time and who has custody of a child under six years of age may, upon request, be excused from jury service. In addition, the statute provides that a person may be excused from jury service upon a showing of hardship, extreme inconvenience, or public necessity.

## **Georgia**

*Ga. Code Ann. § 15-12-1(3) (2006)* provides an exemption for jury duty to “any person who is the primary caregiver having active care and custody of a child under six years of age or younger....”

## **Illinois**

*705 Ill. Comp. Stat. Ann. § 305/10.2(b) (2006)*. A person may be excused from jury service upon showing that jury service would impose an undue hardship on account of the nature of the prospective juror’s family situation. It is further provided that when an undue hardship caused by a family situation is due to the prospective juror being the primary caregiver of a child under age 12, the juror is to be excused if the jury commissioner finds that no reasonable alternative care is feasible which would not impose an undue hardship on the prospective juror.

## **New Jersey**

*N.J. Rev. Stat. Ann. § 2B:20-10(c)(3) (2007)* provides an excuse from jury service for a prospective juror having a personal obligation to care for another, including a minor child, who requires the prospective juror’s personal care and attention, and no alternative care is available without severe financial hardship on the prospective juror or the person requiring care.

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<sup>7</sup> Colorado (*Colo. Rev. Stat. 13-71-105 (2006)*) sets out the qualifications for juror service and provides for disqualification for service. While an exception is provided for the care of a permanently disabled person living in the same household, there does not appear to be a child care exception. Massachusetts (*Mass. Ann. Laws ch 234A, § 4 (2006)*) sets out juror qualifications and provides an exception for the care of a disabled person. This exception would not appear to apply to child care or breastfeeding situations.

## **South Carolina**

*S.C. Code Ann. § 14-07-860(B)(1) (2006)* provides authority to a judge to excuse jurors for good cause if the person has legal custody and the duty of care for a child less than seven years of age.

## **Tennessee**

*Tenn. Code Ann. § 22-1-104(b) (2006)* provides an excuse from jury service upon a showing that service will constitute an undue hardship and upon making an oath that the person will, if excused, be caring for the person's child, children, grandchild or grandchildren, or ward.

## **Texas**

*Tex. Code Crim. Proc. Code Ann. Art. 19.25.[356][407][395](2) (2006)* provides that a person responsible for the care of a child younger than eighteen years may be excused from grand jury service. *Tex. Gov't Code Ann. § 62.106(a)(2) (2006)* provides that a person qualified to serve as a petit juror may establish an exemption from jury service if the person has legal custody of a child younger than ten years of age and the person's service on the jury requires leaving the child without adequate supervision.

## **Virginia**

*Va. Code Ann. § 8.01-341(8) (2006)* provides for an excuse from jury duty for "a person who has legal custody of and is necessarily and personally responsible for a child or children 16 years of age or younger...."

## **Wyoming**

*Wyo. Stat. Ann. § 1-11-104 (2006)* provides that a person may be excused from jury duty when the care of that person's young children requires his absence.

## **Pending State Legislation Dealing with Breastfeeding Mothers and Jury Duty**

At the current time, one state's legislature is considering a bill which, if enacted, would impact breastfeeding mothers and their jury duty responsibilities. The bill is cited and summarized below. However, it should be considered, as it is early in the state legislative sessions, that additional bills may be subsequently introduced.

## **Wyoming**

*Wy. H.B. 105 (2007)* is a comprehensive legislative initiative dealing with various aspects of breastfeeding. One of the provisions would allow for breastfeeding mothers to be excused from jury duty.



## **Court Rules Which May Provide a Deferral/Excuse from Jury Duty**

This section of the report deals only with state-wide court rules and federal district court rules for jury service relating to breastfeeding. It does not deal with local, county, or municipal court rules which may provide 1) a specific excuse for breastfeeding mothers; or 2) a general excuse under “family friendly” court rules.

### **State Rule—California**

*Cal. Rules of Court, Rule 859 (2006)*<sup>8</sup> provides for the deferral of jury service. A mother who is breastfeeding a child may request that jury service be deferred for up to one year, and may renew that request as long as she is breastfeeding. If the request is made in writing, under penalty of perjury, the jury commissioner must grant it without requiring the prospective juror to appear at court.

### **Federal District Court Rules**

Many of the federal district courts have made a provision in their jury plan to excuse or a defer jury duty for persons caring for a child or children under the age of ten. It appears that the rules vary among the federal district courts, including even among those located within the same state.

For example, the U.S. District Court for the Central District of California has a rule concerning individual requests for excuse or deferment from jury duty. This rule provides an excuse for:

Persons having active care and custody of a child or children under 14 years of age whose health and/or safety would be jeopardized by their absence for jury service; or a person who is essential to the care of an aged or infirm person.<sup>9</sup>

In contrast, the U.S. District Court for the Northern District of California provides an excuse upon the request of a sole caretaker of a preschool child or of an aged or disabled person, and not otherwise employed.<sup>10</sup> In further contrast is the rule of the U.S. District Court for the Southern District of California, which provides an excuse for:

2) Any person having active care and custody of a child or children under 10 years of age whose health and/or safety would be jeopardized by absence of such person for jury service; or a person who is essential to the care of aged or infirm persons.<sup>11</sup>

These variations illustrate how different district courts in the same state handle the “family care” issue under different rules. While it appears that a breastfeeding mother might be excused from

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<sup>8</sup> Effective July 1, 2001.

<sup>9</sup> General Order Number 99-8, Random Selection of Grand and Petit Jurors; 2.(c) “Individual Request for Excuse or Deferment” (Oct. 1, 1999).

<sup>10</sup> Plan for the U.S. District Court for the random selection of grand and petit jurors. Rule X.(1) “Excuses on individual request” (Feb. 22, 2001).

<sup>11</sup> Civil Local Rules; Civil 83.10 Jury Selection Plan; e. Qualified Jury Wheel; 2 Excuses on Individual Request.

jury duty in these federal district courts, the term “breastfeeding” is not used, and the language of the rules is different. It is possible that the rules could be interpreted differently in various breastfeeding circumstances.

## Chart Comparison of the Ways in Which Different State Jurisdictions Deal with Breastfeeding Mothers and Jury Duty

The following chart compares the ways in which states currently deal with the issue of breastfeeding and jury duty.

Some states have enacted legislation which provides a specific excuse or deferral from jury duty for a breastfeeding mother. Other states have enacted more general “family friendly” legislation that excuses a prospective juror from duty when faced with various family responsibilities. Depending upon the language of the statute and its implementation, such legislation may or may not excuse or defer breastfeeding mothers from jury duty. Legislation is currently pending in Wyoming to legislatively respond to the issue of breastfeeding and jury duty.

California has a specific state-wide court rule which deals with the issue of breastfeeding mothers and jury duty. It is likely that local and state courts—where there is no uniform rule—may have varied, and not necessarily implemented consistent policies in dealing with breastfeeding mothers and jury duty responsibilities.

**Table 1. Comparison of State Jury Duty Laws and Rules Concerning Breastfeeding**

State	Specific legislation to excuse or defer jury duty for breastfeeding mothers	“Family friendly jury duty legislation”	Pending legislation	Uniform statewide court rule
Alabama				
Alaska		X		
Arizona				
Arkansas				
California	X [Requires that jury summons include a reference to jury rules for breastfeeding mothers].			X
Colorado		X [However, legislation probably not applicable to breastfeeding mothers].		

State	Specific legislation to excuse or defer jury duty for breastfeeding mothers	“Family friendly jury duty legislation”	Pending legislation	Uniform statewide court rule
Connecticut				
Delaware				
District of Columbia				
Florida		X		
Georgia		X		
Hawaii				
Idaho	X			
Illinois	X	X		
Indiana				
Iowa	X			
Kansas	X			
Kentucky				
Louisiana				
Maine				
Maryland				
Massachusetts		X [However, legislation probably not applicable to breastfeeding mothers].		
Michigan				
Minnesota	X			
Mississippi	X			
Missouri				
Montana				
Nebraska	X			
Nevada				
New Hampshire				
New Jersey		X		
New Mexico				
New York				
North Carolina				
North Dakota				
Ohio				
Oklahoma	X			

<b>State</b>	<b>Specific legislation to excuse or defer jury duty for breastfeeding mothers</b>	<b>“Family friendly jury duty legislation”</b>	<b>Pending legislation</b>	<b>Uniform statewide court rule</b>
Oregon	X			
Pennsylvania				
Rhode Island				
South Carolina		X		
South Dakota				
Tennessee		X		
Texas		X		
Utah				
Vermont				
Virginia	X	X		
Washington				
West Virginia				
Wisconsin				
Wyoming		X	X	

**Source:** Congressional Research Service.

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