RESOLVED, That the American Bar Association encourages federal, state, local, territorial, and tribal legislatures and court systems, in conjunction with state and local bar associations, to support and assist with the establishment and maintenance of lactation areas in courthouses. The lactation areas should be available to members of the public, including lawyers, jurors, litigants, witnesses, and observers. The lactation areas should: (1) be shielded from view and free from intrusion from the public; (2) have a door that can be locked; (3) include a place to sit, a table or other flat surface, and an electrical outlet; (4) be readily accessible to and usable by individuals with disabilities; and (5) not be located in a restroom.
REPORT

I. Why Do We Need This Change?

In 2018, a young female litigator, nine months postpartum, tried a civil jury case in a courthouse she visited regularly. Still a nursing mother, she asked for a private space where she could pump, or express, breast milk at regular intervals throughout the day. She was provided with a “rickety old witness room with no lock on the door.” On two separate occasions, she was interrupted by court security, who walked into the room without knocking and who were visibly shocked to see her hooked up to a breast pump in her suit. Extraordinarily embarrassed, she returned to court after these encounters and she continues to face uneasiness with these court security personnel, whom she sees frequently.

Another female litigator first-chaired a jury trial one month after returning to work after having given birth to her first child. Instead of pumping in her car, as was her usual practice for quick court appearances, she did not have enough time to run back and forth to her car during the trial, so she had to search for a clean, private space in the courthouse. The judge would not provide for frequent breaks during the trial, so this litigator’s only chance to express breast milk was during the lunch recess. Because the courthouse had no private lactation space, and because jurors were always in the public restroom on breaks, she found herself in an empty attorney conference room down the hall. The door had a window that someone could presumably look into and there was no lock. So the litigator sat in the far corner of the room, pushed a chair against the door, and crossed her fingers. Unfortunately, this was to no avail. On her first day in this unfortunate setup, the bailiff walked in on her while she was already hooked up to her breast pump and subjected her to questions about what she was doing and why she was there before he permitted her to stay.

There are many more stories to tell; including that of the prosecutor who worked in an old courthouse and was provided with the only room with a door she was allowed—to close: a jail holding cell in the basement. Then there is the story of the appellate litigator who had no option but to pump between oral arguments in the women’s public bathroom, while sitting on the toilet—the only seat in the room. Or the attorney who, in an effort to plan ahead, contacted the judge’s chambers before her trial, only to arrive and discover that the “private space” set aside for her was the “private” courtroom bathroom.

Sadly, these attorneys’ experiences are not unique, nor are they exceptions to the rule. While there have been notable strides in laws around the country expanding the protections for breastfeeding mothers—indeed, all 50 states plus the District of Columbia,

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1 See infra Section II.
2 These personal anecdotes were submitted to the authors of this report in October 2018 through the Facebook group, MothersEsquire (National)—a private group limited to attorneys who are also mothers—by attorneys wishing to remain anonymous. The authors and sponsors of this resolution have respected this wish.
3 See supra note 2.
4 See supra note 2.
Puerto Rico, and the U.S. Virgin Islands now have laws that specifically allow women to breastfeed in any public or private location—breastfeeding mothers still face significant barriers, harassment, or are subjected to intense questioning, when breastfeeding in public. Moreover, breastfeeding mothers who are away from their babies face additional challenges in public places in finding a clean, accessible, comfortable, and private space to pump. Many of these mothers are protected in their places of employment, but if their employment requires travel to outside locations—such as a courthouse—the protections do not carry over.

In addition to serving lawyers, dedicated lactation areas in courthouses also serve to benefit members of the public, jurors, litigants, witnesses, and observers. Imagine a new mother who receives her summons to jury duty, a witness, or an alleged victim of a crime trying to navigate an already stressful environment with added pressures of not knowing if she will be able to have access to a clean, accessible, comfortable, and private space to express milk or nurse her child. Providing these areas eliminates a barrier to women actively and more fully participating in, and accessing our justice system.

It is therefore crucial that courthouses provide dedicated lactation areas for members of the public, including lawyers, jurors, litigants, witnesses, and observers. It is helpful to define what a lactation area is. While there is no federal law on point, Congress did recently pass the Friendly Airport for Mothers Act. This act, sponsored and championed by Senator Tammy Duckworth, signed by President Trump, and enacted on October 5, 2018 makes certain grant application funds for airports available only if the airport maintains a lactation area at each passenger terminal building of the airport behind the


6 The Fair Labor Standards Act requires employers of 50 or more employees to provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child’s birth each time such employee has need to express the milk. 29 U.S.C.A. § 207 (r) (1) (A). Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk. 29 U.S.C.A. § 207 (r) (1) (B). The employer is not required to compensate the employee receiving reasonable break time to express breast milk under this statute. 29 U.S.C.A. § 207 (r) (2).


7 This is as opposed to the nursing mothers who are actually employed by the judicial system in the courthouses, who would presumably be covered by the aforementioned federal and state laws.


airport security screening area. The definition of a “Lactation Area” in this act is also entirely appropriate for courthouses. The Act defines a lactation area to mean:

- Is shielded from view and free from intrusion from the public;
- Has a door that can be locked;
- Includes a place to sit, a table or other flat surface, and an electrical outlet;
- Is readily accessible to and usable by individuals with disabilities; and
- Is not located in a restroom.

The American Academy of Pediatrics recommends that infants be exclusively breastfed for the first six months of their lives with continued breastfeeding alongside introduction of complementary foods for at least one year. The adage, “Breast is Best!” is one most new mothers hear time and time again in prenatal education classes, at the hospital for delivery, and at postpartum doctor’s visits. While there is a recent movement to better educate new mothers on all feeding choices, the benefits of feeding a baby breast milk are hard to deny. Even the United States Surgeon General has issued a long-standing “Call to Action to Support Breastfeeding.” According to the Center for Disease Control and Prevention, among infants born in 2015 in the United States, four out of five (83.2%) started to breastfeed at birth, over half (57.6%) were breastfeeding at six months, and over one-third (35.9%) were breastfeeding at twelve months. These high rates demonstrate that mothers in the United States are getting the message, they want to breastfeed, and they start out doing so. Supporting a woman’s choice to breastfeed means supporting where and how women breastfeed as their babies grow.

A clean, accessible, comfortable, and private space where a nursing woman may express breast milk is thus critical to supporting working mothers who choose to breastfeed. This is especially so in the legal profession. The United States Census Bureau recently reported that nationwide there are 400,000 women lawyers, which makes

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up approximately one in every three attorneys (38%). While it is unclear how many of these attorneys are nursing mothers, what is clear is that women attorneys are leaving the practice of law in droves during their childbearing years.

The National Association of Women Lawyers reported in 2018, for example, that while approximately 50% of law students nationwide are women, and while law firms have recruited women as entry-level associates roughly in proportion to their representation among law school graduates, these women are not reflected in the numbers of non-equity or equity partners in those same law firms. While women are 47% of all law firm associates, they are only 30% of all non-equity or income partners, and only 20% of all equity partners. Why? The answer to this question is undoubtedly varied and complicated, but one thing is for sure: for nursing mother-attorneys, practicing law while successfully breastfeeding is not easy. The absence of clean, accessible and private lactation areas in courthouses for the public—including especially the attorneys that frequent these courtrooms—presents an unnecessary yet entirely avoidable challenge for breastfeeding mother-attorneys in our profession.

The American Bar Association has the power and influence to take the lead in surmounting this challenge and in doing so it can make a long-lasting positive change in the legal profession. As Secretary Hillary Rodham Clinton wrote when she was Chair of the ABA Commission on Women in the Profession in 1988, the ABA has a “commitment to the principle that women are entitled to participate as equals in all aspects of the profession.” This commitment is consistent with Goal III of the Association, which is to “[p]romote full and equal participation in the association, our profession, and the justice system by all persons.”


19 As one author put it, because of the accelerating drop in female fertility between the ages of 31-35, the fact that the average age of a law school graduate is 27 years old, and the fact that the average path from associate to partner in a private firm setting is 10 years, “women are biologically encouraged to bear children at the same time that their careers require the most commitment of time and energy.” The Horrible Conflict Between Biology and Women Attorneys, Anusia Gillepsie, JD, MBA, ABA CAREER CENTER, April 5, 2017, at http://www.abalcc.org/2017/04/05/the-horrible-conflict-between-biology-and-women-attorneys/ (last visited Oct. 19, 2018).

The desire to maintain a work/life balance as well as avoid the feeling of constantly playing “catch-up” to male counterparts who did not take an extended parental leave when starting a family often contribute to these mother-attorneys leaving their jobs. Id. The American Bar Association’s Commission on Women in the Profession, at the direction of ABA President Hilarie Bass, looked closely during the 2017-2018 bar year at the question of why women—and not just mother-attorneys—leave the legal profession; its report and findings on this troubling issue is forthcoming.


21 See Peery, supra note 9, at 3, 10, 11.

22 ABA Resolution 88A121, at 2 (Sponsored by Commission on Women in the Profession).

Without a clean, accessible, comfortable, and private lactation space in all appropriate courthouses, breastfeeding attorneys face the choice of having to express breast milk in an unsanitary or public place, of not expressing milk, which will most certainly negatively affect their breast milk supply, or of simply not going to court and asking someone else to perform their job for them. Breastfeeding attorneys should not have to choose between practicing law and feeding their children. This resolution will go a long way in making sure that many more attorneys can do both.

II. The Physiological Need for a Lactation Area

Understanding why nursing mothers need a clean, accessible, comfortable, and private lactation area in courthouses requires understanding why nursing mothers need to express breast milk at regular intervals throughout the day (and why they cannot simply skip pumping sessions or wait until the end of the work day to pump). The answer is actually quite simple. "For the most part, milk production is a 'use it or lose it' process. The more often and effectively your baby nurses, the more milk you will make."\(^{24}\) Conversely, the less often your baby nurses, the less milk you will make. KELLYMOM.COM, one of the most well-respected and frequently consulted lactation consultant resources available, explains the process as follows:

Milk is being produced at all times, with speed of production depending upon how empty the breast is. Milk collects in mom’s breasts between feedings, so the amount of milk stored in the breast between feedings is greater when more time has passed since the last feed. The more milk in the breast, the slower the speed of milk production.

To speed milk synthesis and increase daily milk production, the key is to remove more milk from the breast and to do this quickly and frequently, so that less milk accumulates in the breast between feedings.\(^{25}\)

What this means is that the less frequently a mother’s breast is emptied, the less milk she will make.\(^{26}\)

The supply-and-demand nature of breastfeeding requires that nursing mothers empty their breasts often—at least as often as their baby eats each day. When a nursing mother is not physically with her baby, her need to empty her breasts and express her breast milk does not subside. Rather, she must express milk, generally using a pump, with the same frequency as if her baby were there with her, nursing. This would mean that a working staff member, juror, courthouse attendee, attorney, or judge who nurses her child might need to pump between three to five times in a working day to maintain the adequate supply to sustain her child(ren). The nature of breastfeeding therefore demands that nursing mothers pump regularly and consistently. The absence of clean, accessible,


\(^{25}\) Id.

\(^{26}\) Id.
comfortable, and private lactation areas in courthouses for breastfeeding attorneys poses a significant challenge to this demand.

The inability to express milk on a regular schedule or the inability to fully empty milk from the breast can also cause health issues for a mother. When a woman cannot express milk when her breasts are full, she likely will experience intense pain or engorgement, or she can develop a plugged duct. Failure to express milk can also result in a painful infection called Mastitis. Mastitis causes swelling, fever, chills, localized engorgement in the breast, and sore, cracked, or bleeding nipples. This infection can be detrimental to a nursing mother’s health and her ability to provide breast milk for her child.

Where time for breaks and court recesses is often both capped and extremely short, the absence of a dedicated lactation area makes it unnecessarily difficult to pump quickly and efficiently. Where the only private space to pump is frequently the restroom, it becomes nearly impossible to express, handle and store breast milk in a sanitary environment. It is important to note that asking someone to pump or nurse in a restroom is unsanitary, demeaning, extremely difficult, and not practical to anyone. Finally, the absence of a dedicated lactation area exposes nursing attorneys to, at the very least, potential professional and personal embarrassment and awkwardness, which most certainly hampers an attorney’s ability to best represent her clients and herself. Therefore, in order to support nursing attorneys, we must facilitate their need to pump in a clean, accessible, and private place throughout the day.

III. Where Are We Now: Current Laws That Protect Nursing Mothers in Courthouses

As noted above, quite a few protections for nursing mothers already exist. All 50 states, plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, have laws that specifically allow women to breastfeed in any public or private location. Thirty states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands exempt breastfeeding from public indecency laws. Twenty-nine states, the District of

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28 Id.
29 Id.
30 See Breastfeeding State Laws, NATIONAL CONFERENCE OF STATE LEGISLATURES, supra note 5.
32 See Breastfeeding State Laws, NATIONAL CONFERENCE OF STATE LEGISLATURES, supra note 5.
Columbia and Puerto Rico have laws related to breastfeeding in the workplace. There are very few, if any, laws or court rules that pertain to the provision of dedicated lactation areas for the public in government-owned buildings such as courthouses, however.

Puerto Rico requires shopping malls, airports, public service government centers and other select locations to have accessible areas designed for breastfeeding and diaper changing that are not bathrooms. Louisiana requires certain state buildings to provide suitable areas for breastfeeding and pumping; it provides that such areas are “in the form of a room, other than a toilet stall” and that they “shall have, at minimum, all of the following features: (1) A lockable door; (2) A work surface and chair; (3) Storage for cleaning supplies; [and] (4) Conveniently placed electrical outlets.” The statute clarifies that it is intended to protect both state government employees domiciled in the buildings and the public.

In August 2018, Illinois passed a law, effective January 1, 2019, that is directly on point. It provides that:

On or before June 1, 2019, every facility that houses a circuit court room shall include at least one lactation room or area for members of the public to express breast milk in private that is located outside the confines of a restroom and includes, at minimum, a chair, a table, and an electrical outlet, as well as a sink with running water where possible.

The statute further requests that the Illinois Supreme Court create minimum standards for the appropriate training of courthouse staff as well as requirements for posting of notice to the public regarding location and access to the rooms.

As previously referenced, Congress recently passed the Friendly Airports for Mothers Act of 2017. If it were applicable to courthouses, this bill would accomplish the goals set out in this resolution.

Finally, a few bar associations across the country have begun work on this important mission. The Women Lawyers Association of Michigan is working on a Courthouse Lactations Rooms initiative with various courthouses across the state of Michigan to provide accommodations for nursing mothers to express milk while at court. Additionally, the Florida Association for Women Lawyers put together a thorough “Courthouse Lactation Room Handbook” that offers, among other things, best practices

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34 See Breastfeeding State Laws, NATIONAL CONFERENCE OF STATE LEGISLATURES, supra note 5.
for establishing and maintaining lactation rooms in courthouses. It even includes suggested amenities, best practices for room access and room naming, and an inventory checklist. This Handbook would be an excellent resource for other bar associations to use in working with courthouses to create and maintain the lactation areas encouraged in this resolution.

Thus, although some laws furthering the goals in this Resolution and Report do exist, there is clearly a need for more protections for nursing attorneys across the country.

IV. Conclusion

Breastfeeding mothers should not have to choose between doing their job and feeding their children. The current state of many courthouses—which includes the absence of any lactation areas for nursing attorneys—facilitates this choice instead of eliminating it. While some states are moving in the right direction of providing adequate protection for nursing attorneys in courthouses, encouragement is needed to keep this trend going. With the enactment of The Friendly Airports for Mothers Act of 2017, there is momentum. The time is now for this Association to step up and exercise its voice in support of nursing mothers, especially nursing attorneys.

Respectfully submitted,

Tommy D. Preston, Jr.
Chair, Young Lawyers Division
January 2019

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43 In a section entitled, “Best Practices for Room Naming,” for example, the Handbook suggests that the courthouse consider a name that is easily identifiable to promote room accessibility for nursing mothers, such as “Lactation Room, Nursing Lounge, Nursing Room [or] Mother’s Room.” Courthouse Lactation Room Handbook, see supra note 40, at 11. The “must haves”—which are based on best practices and not legal requirements—for a lactation room include, among other things, “[a] comfortable chair (ideally, a rocking chair); [a]ccess to electrical outlet (for breast pumps without battery function); [a] light source; [a] small table next to chair to hold a breast pump and pumping supplies (at least 24’ x 24’); [h]and sanitizer (if no water source is available in the room); [p]aper towels; [and a] [t]rash can.” Id. at 15.
GENERAL INFORMATION FORM

1. **Summary of Resolution**

   This resolution encourages federal, state, local, territorial, and tribal legislatures and court systems, in conjunction with state and local bar associations, to support and assist with the establishment and maintenance of lactation areas in courthouses. The lactation areas should be available to members of the public, including lawyers, jurors, litigants, witnesses, and observers. The lactation areas should: (1) be shielded from view and free from intrusion from the public; (2) have a door that can be locked; (3) include a place to sit, a table or other flat surface, and an electrical outlet, (4) be readily accessible to and usable by individuals with disabilities; and (5) not be located in a restroom.

2. **Approval by Submitting Body**

   The ABA Young Lawyers Division (“YLD”) Council approved this resolution unanimously on November 2, 2018.

3. **Has this or a similar Resolution been submitted to the House or Board previously?**

   No.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

   In 1988, the ABA passed Resolution 88A121, which recognized the barriers that exist that deny women the opportunity to achieve full integration and equal participation in the legal profession, affirmed the principle that there is no place in this profession for those barriers, and called upon members of the profession to eliminate those barriers.

   In 1996, the ABA passed Resolution 96A112, which encouraged state, local and territorial governing bodies and court systems, in conjunction with bar associations, to support and assist in the organization and implementation of waiting rooms for children in every appropriate courthouse.

   In 2002, the ABA passed Resolution 02A112, which urged all federal, state, territorial, and municipal courts to help ensure equal access to justice by making courthouses and court proceedings accessible to individuals with disabilities, including lawyers, judges, jurors, litigants, court employees, witnesses, and observers.
This Resolution is a natural extension of the policy adopted in 88A121, and aims to accomplish a goal similar in scope and spirit to those highlighted in 96A112 and 02A112. This Resolution would not otherwise affect any of these policies.

5. **If this is a late Report, what urgency exists which requires action at this meeting of the House?**

   N/A.

6. **Status of Legislation (if applicable).**

   N/A.

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

   After adoption, the Young Lawyers Division will work with the Governmental Affairs Office to determine the most effective way to advocate for this Resolution. The Young Lawyers Division will also plan on presenting this Resolution to the Conference of Chief Justices at its Late Winter / Spring 2019 meeting.

8. **Cost to the Association (both indirect and direct costs).**

   None.

9. **Disclosure of Interest.**

   None.

10. **Referrals**

    Center on Children and the Law
    Criminal Justice Section
    Government and Public Sector Lawyers Division
    Judicial Division
    Law Student Division
    Section of Civil Rights and Social Justice
    Section of Family Law
    Section of Litigation
    Standing Committee on Gun Violence
    Tort, Trial, and Insurance Practice Section
    Conference of Chief Justices
11. **Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address.)**

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12. **Contact Name and Address Information. (Who will present the Resolution with Report to the House?)**

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EXECUTIVE SUMMARY

1. **Summary of Resolution.**

   This resolution encourages federal, state, local, territorial, and tribal legislatures and court systems, in conjunction with state and local bar associations, to support and assist with the establishment and maintenance of lactation areas in courthouses. The lactation areas should be available to members of the public, including lawyers, jurors, litigants, witnesses, and observers. The lactation areas should: (1) be shielded from view and free from intrusion from the public; (2) have a door that can be locked; (3) include a place to sit, a table or other flat surface, and an electrical outlet, (4) be readily accessible to and usable by individuals with disabilities; and (5) not be located in a restroom.

2. **Summary of the Issue which the Resolution addresses.**

   This Resolution aims to provide members of the public, especially attorneys who are nursing mothers, with a clean, accessible, comfortable, and private space within which to express milk while in court. New mothers physiologically must stick to a strict feeding and expressing schedule in order to make enough breast milk to feed their child(ren), and the absence of any clean, accessible, comfortable, and private lactation areas in courthouses often precludes them from doing so. A working, nursing mother should not have to choose between going to work and feeding her child. This Resolution is a step in the direction of providing working, nursing mothers with the protection they need to never have to make this choice in the first place.

3. **An explanation of how the proposed policy position will address the issue.**

   The policy will encourage legislatures, court systems, and bar associations across the country to work together to offer clean, accessible, comfortable, and private lactation areas in courthouses across the country.

4. **A summary of any minority views or opposition internal and/or external to the ABA which have been identified.**

   No minority or opposing views have been identified.