



COMMISSION ON HUMAN RELATIONS

LOS ANGELES COUNTY

"Enriching lives through effective and caring service"

September 28, 2017

MEMORANDUM TO THE COMMISSIONERS

FROM: Isabelle Gunning, President

SUBJECT: Commission Meeting- Monday, October 2, 2017

Our Commission will meet on Monday, October 2, 2017 at 12:30 p.m., at 3175 W. Sixth Street, Teamwork Conference Room 301 (3rd Floor), Floor, Los Angeles, California.

Enclosed is the Agenda, Draft Minutes of September 11, 2017 meeting and other pertinent information for your review and approval.

If you are unable to attend the meeting, please call Grace Löwenberg at (213) 639-6089 no later than **9:00 a.m., Monday, October 2nd!**

Please ensure you have your Photo ID to enter the premises or you will need to sign in the reception area/security guard. Thanks.

See you **Monday!**

(Parking is available on 523 Shatto Street, 4th and Shatto. Park on Level 3 and above.)

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Board of Supervisors

Hilda Solis
First District

Mark Ridley-Thomas
Second District

Sheila Kuehl
Third District

Janice Hahn
Fourth District

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Fifth District

Sachi A. Hamai
Chief Executive Officer

Human Relations Commissioners

Isabelle Gunning, Esq.
President

Ashlee Y. Oh

Vice President/Secretary

Melina Abdullah, Ph.D.

Jarrett T. Barrios, Esq.
Ilan Davidson

Vice Presidents

Cynthia Anderson Barker, Esq.
Michael Gi-Hao Cheung
Ilan Davidson
Adrian Dove
Porter Gilbert
Preeti P. Kulkarni
Samuel Liu
Daisy Ma
Guadalupe G. Montaña
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Philip R. Valera

Human Relations Staff
Robin S. Toma, Esq.
Executive Director

Robert Sowell
Assistant Executive Director

Intergroup Relations Specialists

Kevin Coleman
Gustavo Guerra Vasquez
Sikivu Hutchinson
Yuisa Gimeno
Monica Lomeli
Juan Carlos Martinez
RiKu Matsuda
Josh Parr
Gustavo Partida
Ray Regalado
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Grace Löwenberg

Barbara Nolen
Emily Pacheco
Sharon Williams

Dispute Resolution Program

Community and Senior
Services

Cynthia Banks
Director

Otto Solorzano
Chief Deputy Director

Ad Hoc Committee on Policing and Human Relations Committee will meet prior to Commission meeting @ 11:00 am., in Teamwork Rm. 301. (Same room.) Members: Melina Abdullah, Chair, Cynthia Anderson Barker, Adrian Dove, Isabelle Gunning, Sandra Thomas. **Staff:** Robin Toma, Ray Regalado, Yuisa Gimeno, Joshua Parr



Los Angeles County Commission on Human Relations
3175 W. Sixth Street, Ste. 400, Los Angeles, CA 90020
(213) 738-2788

A G E N D A

MEETING OF THE COMMISSION/EXECUTIVE COMMITTEE

October 2, 2017 – 12:30-2:00 pm.

Ray Bartlett/Teamwork Conference Room 301 – L.A. County WDACS (CSS) Building
3175 W. Sixth Street, Los Angeles, CA 90020

Our mission: to transform prejudice into acceptance, inequity into justice, and hostility into peace

1. Call to Order/Flag Salute and Moment of Silence

2. Review/Approval of Minutes

3. Public Comment

4. President's Report

- 4.1 Spotlight on a Commissioner
- 4.2 Community Hearing for Women/LGBTQ Policing and Human Relations -9-23-17
- 4.3 International Association of Official Human Rights Agencies (IAOHRA) Conference
Aug. 24-28, 2018
- 4.4 Upcoming JAF Awards Event – Tuesday, October 10th, 11:00 am.

5. Executive Director's Report

- 5.1. Hate Violence Prevention Partnership Update
- 5.2. Indigenous People's Day Update
- 5.3. CAHRO So. Cal. Regional Human Relations Summit – November 9th
- 5.4. IAOHRA Conference Report

6. Committee Report

- 6.1. John Anson Ford (JAF) Human Relations Awards Event Committee
- 6.2. Ad Hoc Committee on Policing and Human Relations

7. Action/Discussion Items

- 7.1. Hate Crime Rhetoric and Hate Crime Report/Addressing Hate Motivated Activity
- 7.2. Commission Recommendation on Legislation
 - Safe Access to the Courts (SB 785)*
 - Study of Local Government Entity Authority to Enforce State Anti-Discrimination Laws (SB 491)*
- 7.3 Board Directive on Annual Report and Sunset Review of Commissions*
- 7.4 Sheriff's Policy on Drones and SB 21 (Police policies on Surveillance)*

8. Commissioner's Comments/Announcements (2 minutes per item)

9. Adjournment (2:00)

Note: The following Commissioners will be participating by conference telephone communication from the following locations: Ashlee Oh, 500 W. Temple St., Los Angeles, CA 90012; 213-974-2326; Sandra Thomas, 3544 Canon Blvd., Altadena, CA 91001, (626) 399-5007.

Para mas información en español, favor de comunicarse al (213) 738-2788.

* Denotes that this agenda packet includes written material regarding this agenda item.

** All committee reports are to be submitted in writing in advance for the agenda packet whenever possible. Meetings are held in English. If interpretation in other languages or accommodations for persons with disabilities are needed, please contact the Commission at (213) 738-2788 at least 3 business days before the meeting. The meetings of the Human Relations Commission are accessible to persons with disabilities. Access to the facility is via the Sixth Street entrance.



Los Angeles County Commission on Human Relations

3175 W. Sixth Street, 4th Floor
Los Angeles, California, 90020
<http://www.lahumanrelations.org>

(213) 738-2788

[PROPOSED] MINUTES
COMMISSION ON HUMAN RELATIONS
Commission Meeting of September 11, 2017
Workforce Development Aging and Community Services (WDACS)
3175 W. Sixth Street, Los Angeles, California 90020
Rm 301 CSS Teamwork

PRESENT: Melina Abdullah Porter Gilberg
 Cynthia Anderson-Barker Isabelle Gunning
 Ilan Davidson Samuel Liu
 Adrian Dove Ashlee Oh (By Phone)
 Michael Gi-Hao Cheung

ABSENT: Jarrett Tomas Barrios Guadalupe Montaña
 Preeti Kulkarni Sandra Thomas
 Daisy Ma

STAFF: Robin Toma Grace Löwenberg
 Robert Sowell Emily Pacheco
 Monica Lomeli

1. **Call to Order/Flag Salute and Moment of Silence:** Commission President Isabelle Gunning called the meeting to order at 12:46 p.m., and a quorum of the Commission was established with 9 commissioners present. Commissioner Davidson led the pledge of allegiance, and a moment of silence was observed.
2. **Approval of Minutes:** The Commission minutes of August 14, 2017, were approved by the Commission.

It was moved by Commissioner Dove, and seconded by Commissioner Davidson, to approve the minutes of August 14, 2017, as presented. The motion carried unanimously.

3. **Public Comment:** No public comment was received.
4. **President's Report:** Commission President Gunning introduced and led the following report:

4.1 Spotlight on a Commissioner: Mr. Samuel Liu, 4th Supervisorial District:

Commissioner Samuel Liu presented on his experience with human relations, and his professional career. He was born and raised in the South Bay to traditional Taiwanese parents. His grandparents, he explained, escaped China during the communist uprising. His grandmother was a victim of the Nanking Massacre. Commissioner Liu traveled to Taiwan and learned about the various struggles, including the white terror period. As a result, he became more aware of how great it is to be in this Country and have the ability to express opinions without repercussion.

Commissioner Liu attended UC Berkeley where he increased his awareness of civil rights, and majored in Sociology. At that point he made the decision to pursue a career in social justice work. After being asked to campaign for now Congressman Ted Lieu, he attended Loyola Law School and focused on juvenile justice and foster youth. He clerked for Judge Michael Nash, conducted research on changing the L.A. County's Office of Education policy on incarcerated youth, served on the citizens' commission researching jail violence, and worked for the Office of County Counsel.

Commissioner Liu also continued to work on campaigns, and is now Chief of Staff to Senator Ben Allen. He expressed that he recently came out last year, and explained that he has gained experience with dealing with the immigrant faith based community through this process.

4.2 Commission State on the Charlottesville Tragedy: Included in the agenda packet was the statement by the Commission, as finalized with the input provided by commissioners.

5. Executive Director's Report: Executive Director Toma provided the following report:

5.1 LGBTQ 101 Training for HRC Commissioners and Staff: Executive Director Toma reminded commissioners that following the day's meeting, a training titled *LGBTQ 101* would be held for commissioners and staff who will be attending the policing hearing on September 23, 2017.

5.2 Hate Crime Update—Recent Network Against Hate Crime Meeting: Commission staff recently held a Network Against Hate Crime (NAHC) meeting at the National Council of Jewish Women, which regularly hosts the Commission's NAHC. The Anti-Defamation League provided an educational training highlighting the pyramid of hate tool which, in addition to being useful, identifies the association between passive witnessing of hate activity to active discrimination and violence. The tool is also helpful in pointing out that unless something is done in the early stages, it should be no surprise that behavior tends to escalate. A presentation on the hate groups in the Los Angeles area was also provided. The meeting was well attended.

Executive Director Toma also announced that Honorary Commissioner Vito Cannella recently passed away.

6. Committee Report

- 6.1 JAF Human Relations Awards Event Committee:** Commission Staff is currently in the process of sending out notifications to awardees and requesting scrolls from the Board of Supervisors. The list of awardees will be distributed to Commissioners. Commissioners were asked to attend the event which will be held on October 10, 2017, from 11 a.m. to 1 p.m.
- 6.2 Ad Hoc Committee on Policing and Human Relations:** Commissioner Abdullah reminded commissioners that the policing hearing on women's and LGBTQ issues with law enforcement is scheduled for September 23, from 2 p.m. until 5 p.m. at Trade Tech College. A police complaint and commendation clinic will be staffed by law students from Southwestern Law School.

A final hearing to collect law enforcement responses will be held in January 2018.

7. Action/Discussion Items

- 7.1 Indigenous Peoples Day:** Executive Director Toma informed the Commission that the City of Los Angeles passed a motion approving the replacement of Columbus Day with Indigenous People's Day. The Commission previously passed a motion to support the replacement in the County. A lengthier, researched based motion was included in the agenda packet for approval and forwarding to the Board of Supervisors. Staff member Monica Lomeli, Ph.D., completed the research necessary for this motion, and helped to draft the memo that was presented to the Commission for consideration.

It was moved by Commission Anderson-Barker, and seconded by Commissioner Dove, for all the reasons set forth below (please see attached memo), the L.A. County Commission on Human Relations recommends to the Board of Supervisors the adoption of Indigenous Peoples' Day in L.A. County as an official county holiday, to be celebrated on the second Monday in October, in place of Columbus Day; and supports County recognition of Italian American Heritage Day. The motion carried unanimously.

- 7.2 Commission's Place in the County Organizational Structure:** Commissioner Dove, having requested this item be placed on the agenda, clarified that his expectation was to discuss the reduction of incivility that has increased in the recent period, as reported in the media. He proposed a project whereby a video campaign could be developed to address and promote civility towards one another. He proposed a committee to take up the issue. He indicated that he would chair the committee and send out an email to commissioners to obtain participation, if there is interest.
- 7.3 Hate Crime Rhetoric and Hate Crime Report:** Commissioner Abdullah, having requested this agenda item, indicated that she intended to begin the conversation related to the collecting, monitoring, and measuring the occurrence of hate crime incidents that do not rise to the level of hate crime. She emphasized the need to create a network of mutual support, one that is able to create a unified response aimed at reducing hate rhetoric before it escalates. Once the information is collected, it would be important to either include the information in the annual Hate Crime Report or create a separate publication that addresses these types of incidents with specific follow-up recommendations.

- 7.4 Strategic Retreat Follow-up on Commission Process re Legislation:** Executive Director Toma provide a very brief overview of each of the bills listed below, however, due to limited time the Commission agreed to review these bills at the next Commission meeting. Due to the urgency of action needed on item 7.4.3, the Commission expressed support for the request by the State Joint Legislative Audit Committee for an audit of the implementation of hate crime laws.
- 7.4.1 Safe Access to Courts—Senate Bill 785:** To be addressed at the next commission meeting.
- 7.4.2 Study of Local Government Entity Authority to Enforce State Anti-Discrimination Laws—Senate Bill 491:** To be addressed at the next commission meeting.
- 7.4.3 Request to Joint Legislative Audit Committee for Audit Implementation of Hate Crime Laws:** It was moved by Commissioner Liu, and seconded by Commissioner Anderson-Barker to support the request by the State Joint Legislative Audit Committee for an audit of the implementation of hate crime laws. The motion carried unanimously.
- 7.5 Board Directive on Annual Report and Sunset Review of Commissions:** Due to limited time, the Commission agreed to review this item at the next Commission meeting.
- 7.6 Proposal for Addressing Hate-Motivated Activity in this Era:** Due to limited time, the Commission agreed to review this item at the next Commission meeting.
- 7.7 Sheriff's Policy on Drones and SB 21 (police policies on surveillance):** Due to limited time, the Commission agreed to review this item at the next Commission meeting.
- 8. Commissioner's Comments/Announcements:** Commissioner Dove requested that Commissioner Barrios be given an opportunity to provide an update on the natural disaster relief efforts currently being led by the Red Cross.
- 9. Adjournment:** It was moved by Commissioner Dove, and seconded by Commissioner Anderson-Barker, to adjourn the meeting at 2:17 p.m. in memory of Honorary Commissioner Vito Cannella, and Dick Gregory, trailblazer comedian and civil rights activist.

Respectfully submitted,

Commission Staff



2017 IAOHRA Conference

September 24-28, 2017

The W Hotel
1112 4th Avenue
Seattle, WA 98102

Conference Schedule

Sunday, September 24, 2017

2:30 PM-11:00 PM Conference Office/Daily (*Gathering Place, 3rd Floor*)

2:30 PM-6:00 PM Conference Registration (*Pre-function Great Room 2A*)

3:00 PM-3:45 PM Conference Planning Meeting (*Studio 4, 3rd Floor*)

3:45 PM-5:45 PM IAOHRA Board Meeting (*Studio 4, 3rd Floor*)

6:30 PM-8:00 PM Opening Reception (*Great Room 2, 3rd Floor*)

Presiding: Jean Kelleher, President of IAOHRA, Director, Alexandria Office of Human Rights

Blessing: Walter Echo-Hawk

- Recognition of New Members
- Regional Meet & Greet

Monday, September 25, 2017

8:00 AM-5:00 PM Conference Registration (*Pre-function Great Room 2A*)

7:30 AM-8:30 AM Continental Breakfast (*Pre-function Great Room 2*)

8:30 AM-9:30 AM **Greetings/Opening Ceremony** (*Great Room 2, 3rd Floor*)

IAOHRA President, Jean Kelleher, Executive Director, Alexandria Office of Human Rights

Sharon Ortiz, Executive Director, Washington State Human Rights Commission

Patricia Lally, Director, Seattle Office of Civil Rights

Matias Valenzuela, Director, Office of Equity and Social Justice, Office of King County Executive

Ellen Buchman, Executive Vice President, Leadership Conference on Civil and Human Rights

Conference Overview:

Jim Stowe, Executive Director, Montgomery County Office of Human Rights (Co-Chair)

Carol Johnson, Executive Director, Arkansas Fair Housing Commission (Co-Chair)

9:30 AM-10:30 AM **Opening Plenary**

Human Rights In Native America

Native America is at the dawn of a "New Era" in Federal Indian Law and Policy--the Human Rights Era. The challenge at hand for this generation is to implement indigenous human rights that come from modern international human rights laws into domestic laws and policies in the United States. This session will identify implementation challenges in addition to ways human rights agencies can assist.

Presenter:

Walter Echo-Hawk

Moderator: Jim Stowe, Director, Montgomery Country Office of Human Relations

10:30 AM-10:40 AM **BREAK**

10:40 AM-12:30 PM **BREAKOUT SESSIONS**

Affirmatively Furthering Fair Housing

(Great Room 2, 3rd Floor)

Every public and private agency that receives funds or related support from the U.S. Department of Housing and Urban Development (HUD) has an obligation to “Affirmatively Further Fair Housing.”

This session will focus on the new requirements for producing a quality fair housing assessment (formerly called an Analysis of Impediments) and how to insure compliance with the Fair Housing Act and HUD’s AFFH rule. This session will also present specific information, and strategies for developing effective enforcement techniques and building collaborations to achieve housing opportunities and reduce inequality.

Presenter:

Michael Mitchell,
Principal International
Development and Planning,
LLC

Moderator:

Carol Johnson,
Executive Director, Arkansas
Fair Housing Commission

Institutionalizing Equity and Racial Justice in Government

(Studio 4, 3rd Floor)

The City of Seattle and King County have been two jurisdictions leading in race, equity and social justice initiatives in local government. King County has Equity and Social Justice, and the City of Seattle has its Race and Social Justice Initiative. They will each talk about how they are leading their efforts working internally and with the community. The Government Alliance on Race and Equity is a network of local jurisdictions across the country working to dismantle institutional racism in an effort to advance racial equity.

Presenters:

LaMont Green,
Manager Race & Social Justice
Initiative, City of Seattle

Nora Liu,
Government Alliance for Race
and Equity

Moderator:

Matias Valenzuela,
Director, Office of Equity and
Social Justice, Office of King
County Executive

Including the Voices of People with Disabilities

(Studio 5, 3rd Floor)

Including the voices of people with disabilities in civil rights investigations is critical to ensuring their rights to fully participate in social, economic, and political activities. This training will discuss ways to make investigation processes accessible to people with physical, intellectual, and psychiatric disabilities. We will share and discuss strategies for communication, accommodations to consider, and ways to improve accessibility of information about the complaint and investigation process.

Presenter:

**Sarah Haywood
Eaton**

Staff Attorney, Disability
Rights Washington

Moderator:

Sharon Ortiz,
Executive Director,
Washington State Human
Rights Commission

12:30 PM-1:45 PM.....**Lunch** *(Great Room 2, 3rd Floor)*

Speaker:

Stella Adams, Chief of Civil Rights
National Community Reinvestment Coalition

Moderator: Beverly Watts, Executive Director, Tennessee Human Rights Commission

2:00 PM-3:45 PM..... BREAKOUT SESSIONS

Workplace Harassment/ Sexual Assault Of Immigrant Women

(Great Room 2, 3rd Floor)

Immigrant women are covered under Title VII. However, they are often silenced by their undocumented status and do not report widespread workplace sexual assault out of fear. This session discusses this problem and explores cross-jurisdictional issues and steps that can be taken to combat workplace sexual harassment and assault (including rape) of immigrant women workers.

Presenters:

Carmen Flores, Attorney
U.S. Equal Employment
Opportunity Commission

Alyson Dimmitt Gnam,
Attorney Northwest Justice
Project

**Dr. Victoria Breckwich
Vasquez** University of
Washington Bothell

Moderator:

Guadalupe Gamboa,
Commissioner, Washington State
Human Rights Commission

Standing With Immigrants and Refugees

(Studio 4, 3rd Floor)

Local immigrant and refugee communities today are having to responding to national policies and threats. In the State of Washington, local governments and community organizations have come together with networks, legal defense funds and other strategies to stand with immigrants.

Presenters:

Mozhdeh Oskouian,
Directing Attorney Northwest
Immigrant Rights Project
(Seattle Office)

Victoria Mena, Policy
Director and Development
Strategist Colectiva Legal del
Pueblo

Bookda Gheisar, Immigrant
and Refugee Policy & Strategy
Analyst Office of Equity and
Social Justice (King County)

Cuc Vu, Director of Seattle
Office of Immigrant and
Refugee Affairs (OIRA)

Moderator: Matias

Valenzuela, Director, Office of
Equity and Social Justice, Office
of the King County Executive

U-VISA Certification

(Studio 5, 3rd Floor)

In 2000, Congress created the U-Visa when it passed the Victims of Trafficking and Violence Protection Act, a form of humanitarian protection for victims of certain crimes who are currently assisting, have previously assisted, or are likely to be helpful to the investigation of unlawful activity by a law enforcement agency. The U-Visa encourages immigrants to report and assist in the investigation and prosecution of unlawful activity by providing temporary legal status to victims of certain criminal activity. Learn about how a civil rights enforcement agency can certify U-Visas when a civil rights violation is a crime.

Presenter:

Blanca Rodriquez,
Attorney, Northwest Justice
Project

Moderator:

Sharon Ortiz,
Executive Director, Washington
State Human Rights Commission

4:00 PM-5:15 PM **Gang of Four: Seattle's Civil Rights Leaders** (Great Room 2, 3rd Floor)

It was the sixties. Nationally, the civil rights movement took center stage. Marches, sit-ins, demonstrations, and inner-city riots were taking on the powers that be not only in the south, but across urban centers throughout the country.

This panel will discuss how a Native American, an African American, a Latino American, and an Asian American from different backgrounds crossed racial lines and came together to form a powerful political alliance, known as the Gang of Four.

Seattle's Gang of Four changed the face of the city in the 1960s, 70s, and 80s by bringing four ethnic groups together in battle against city, county, and state powerbrokers over development, poverty, fishing rights, and gentrification. The four leaders quickly learned that working together provided greater results than working apart.

"The Four Amigos" refers to Bernie Whitebear, Bob Santos, Roberto Maestas, and Larry Gossett. All went on to leadership roles, including jointly founding the Minority

Executive Directors' Coalition. Whitebear founded the Seattle Indian Health Board and the United Indians of All Tribes Foundation. Santos was a prominent leader among Seattle's Asian Americans and Interim Director of the Community Development Association; Maestas was the founder and director of El Centro de la Raza; Gossett founded the Central Area Motivation Program and went on to public office as a member of the King County Council. Larry Gossett is the sole surviving member of the "Gang of Four."

Presenters:

Larry Gossett, King County Councilmember

Estela Ortega, Executive Director, El Centro de la Raza

Sharon Tomiko Santos, Washington State House of Representatives

Laura Wong Whitebear

Moderator: Matias Valenzuela, Director, Office of Equity and Social Justice, Office of the King County Executive

Tuesday, September 26, 2017

7:30 AM-8:30 AM..... Continental Breakfast *(Pre-function Great Room 1, 2nd Floor)*

Regional Meetings

Southern Region *(Studio 1, 2nd Floor)*

Midwest Region *(Studio 2, 2nd Floor)*

Atlantic Region *(Studio 3, 2nd Floor)*

Western Region *(Strategy Room, 3rd Floor)*

8:30 AM-9:30 AM..... Plenary Session *(Pre-function Great Room 1, 2nd Floor)*

“Strategies For Protection And Promotion Of Human Rights For All”

Keynote: Catherine Lhamon, Chairperson

U.S. Commission On Civil Rights

Moderator: Robin Toma, Executive Director, Los Angeles County Human Relations Commission

9:30 AM-9:40 AM..... BREAK

9:40 AM-11:40 AM..... BREAKOUT SESSIONS

***Interrupting The
School-To-Prison Pipeline***
(Studio 1, 2nd Floor)

This session will explore the civil rights implications of the School-to-Prison Pipeline (STPP). The STPP is a metaphor that describes how children of color and children with disabilities are funneled out of public schools into the juvenile and criminal justice systems.

This session will examine specific policies and practices thought to contribute to this problem, e.g., zero tolerance, exclusionary discipline policies and unconscious bias. There are hopeful interventions that could possibly change this phenomenon that results in the criminalization of vulnerable children.

Presenters:

Dominique Davis,
Founder and CEO of
Community Passageways
Clarence Henderson, Esq.
Commissioner,
Washington State Human
Rights Commission

***50th Anniversary Of The
Fair Housing Act of 1968***
(Studio 2, 2nd Floor)

The year 2018 marks the 50th anniversary of what HUD Secretary Ben Carson has called “one of the best pieces of legislation” our nation has ever passed - the Fair Housing Act. Fifty years after passage of the Fair Housing Act, housing discrimination and residential segregation continue to adversely affect millions of people in our country. That is because where you live matters. It affects every aspect of your life including how long you will live, your propensity to acquiring certain diseases, how much money you will make, your chances of being incarcerated, and whether your children will have a fair shot at attending college. Where you live determines whether you will live in a community with high-performing schools; access to nutritious and affordable food; quality healthcare facilities; reliable transportation;

***International
Human Rights:
A Unifying And
Potent Approach
In The New Era***
(Studio 3, 2nd Floor)

Why should we integrate human rights into our everyday language and programs? What difference does it make for the effectiveness of our work? How can it bring resources for your agency?

Presenters:

Joshua Cooper,
University of
Hawaii, Manoa and
U.S. Human Rights
Network

**Alejandra
Gonza**, Director
of the International
Human Rights
Clinic, University of
Washington School
of Law

Brian Griffey,
Researcher/
Advisor on the
U.S., Amnesty
International

***Protecting Human Rights For All
At The Local Level***
(Strategy Room, 3rd Floor)

**“Big Changes in the Big Apple:
New Directions for New York’s
HRC in the New Era”**

The new Chair/Commissioner of the NYC Commission on Human Rights will provide an update on the new direction and vision for the nation’s largest municipal human rights agency, some of the big strategic, structural, and policy changes they’ve undertaken in recent years, and highlight their work on gender identity and gender expression protections and their work with Muslim and South Asian communities as examples of their multi-pronged approach, including relationship-building, stakeholder and community engagement, communications campaigns, legal enforcement guidance, and law enforcement actions.

Presenter:

Carmelyn P. Malalis, Esq.,
Commissioner, New York City
Commission on Human Rights

**“Taking on Implicit Bias
and Policing Issues in LA: An
initiative in LA County for
Reducing Implicit Bias”**

These panelists will share
initiatives by the

Vanessa Hernandez, Esq.
Education Equity
Director
ACLU-WA

Anne Lee, Esq.
Executive Director,
TeamChild

Marcus Stubblefield
Criminal Justice
Strategies & Policy
Section Manager
Office of the King
County Executive

Moderator:
Diane Clements-Boyd
Executive Director
Evansville-Vanderburgh
County Human Relations
Commission

banks and credit unions; clean, healthy environments; and so much more. Learn how fair housing issues still impact us today and what you can do as a civil and human rights worker to expand housing opportunities that will not only eliminate housing discrimination but, strengthen families, communities, businesses and our overall economy.

Presenter:
Lisa Rice,
Executive Vice President
National Fair Housing
Alliance

Moderator:
Beverly Watts, Executive
Director, Tennessee Human
Rights Commission

Ken Neubeck,
City of Eugene
Human Rights
(former Commissioner)
on Eugene's Equity
and Human Rights
Plan

**Moderator/
Presenter:**

**JoAnn Kamuf
Ward,**
Director, Human
Rights in the U.S.
Project, Columbia
Law School Human
Rights Institute

Commission and the Los Angeles County Board of Supervisors which address inequities in services and policing for the most populous county government in the U.S., including the recent WK Kellogg Foundation grants for the Truth, Racial Healing and Transformation enterprise awarded to 14 regions in the U.S., including Los Angeles.

Presenter:

Isabelle Gunning, Esq.,
President, Los Angeles County
Commission on Human Relations,
and Professor of Law at
Southwestern University School
of Law

Moderator:
Robin Toma, Esq.,
Executive Director, Los Angeles
County Commission on Human
Relations

12:00 PM-1:30 PM.....Lunch (Great Room 1, 2nd Floor)

Fred Underwood, Director of Diversity and Community Outreach Programs, National Association of Realtors
Bryan Greene, General Deputy Assistant Secretary of the Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development (HUD)

Governor Jay Inslee, Washington State

Moderator: Sharon Ortiz, Executive Director, Washington State Human Rights Commission

1:40 PM-3:15 PM..... BREAKOUT SESSIONS

**Washington Attorney
General's Office
A New Approach To Civil
Rights Enforcement**
(Studio 3, 2nd Floor)

This session will highlight civil rights cases filed by the Washington Attorney General, including the first lawsuit filed against the President's Immigration Ban. Learn new and innovative ways to eliminate discrimination.

Presenter:
Colleen Melody,
Division Chief, Wing
Luke Civil Rights Unit,
Washington State Attorney
General's Office

**Fair Housing Discrimination:
Legal Case Review**
(Studio 1 & 2, 2nd Floor)

Brancart & Brancart has represented plaintiffs before the United States District Courts for the Central, Northern, Southern, and Eastern Districts of California, the Districts of Nevada, Montana, and North Dakota, the Court of Appeals for the Ninth Circuit, and the United States Supreme Court. The firm also represents housing discrimination complainants before the U. S. Department of Housing and Urban Development and state fair housing agencies.

**Recent Trends: Respecting
Hate Crime & Prejudice**
(Strategy Room, 3rd Floor)

This presentation will cover both long-term and contemporary national trends regarding hate crime, prejudice and intergroup conflict in the United States from research at the Center for the Study of Hate & Extremism and elsewhere. Among the findings will be an analysis of the correlation between political speech and hate crime following catalytic events. There will also be an examination of both the findings and limitations derived from these various data sets, as well as policy suggestions for stakeholders and regional officials.

Presenter:
Prof. Brian Levin, Director, Center for
the Study of Hate & Extremism California
State University, San Bernardino

Tuesday, September 26, continued

Moderator:
Skylee Sahlstrom,
Commissioner, Washington
State Human Rights
Commission

Presenter:
Chris Brancart, Attorney
Brancart and Brancart

Moderator:
Carol Johnson, Executive
Director, Arkansas Fair
Housing Commission

Moderator:
Benjamin Earwicker,
Director of the Idaho Human Rights
Commission

3:30 PM-5:30 PM..... CORPORATE MEETING (ELECTIONS) *(Great Room 1B, 2nd Floor)*

6:00 PM-7:00 PM.....Reception (Great Room 1, 2nd Floor)
Host: **National Association of Human Rights Workers**

7:30 PM-8:30 PM.....“An Introduction to the Pike Place Market”
(Pike Street Market)

Skylee Sahlstrom, Commissioner
Washington State Human Rights Commission

SEATTLE ON YOUR OWN

Wednesday, September 27, 2017

7:30 AM-8:30 AM..... Continental Breakfast *(Pre-function Great Room 1, 2nd Floor)*

8:45 AM-10:30 AM Plenary Session *(Great Room 1, 2nd Floor)*

“Addressing the Rise in Hate and Bias Crimes”

There has been a rise in hate crimes and bias incidents almost everywhere. Panelists will discuss these issues and what states and local communities are doing as a response.

Patrice O’Neill, Executive Producer, Not In Our Town/The Working Group

Mark C. Bishop, Michigan Department of Civil Rights/Michigan Alliance Against Hate Crimes

Randy Blazak, Chair, Oregon Coalition Against Hate

Jasmin Samy, Civil Rights Director Council on American-Islamic Relations of Washington State

Moderator: Rue Landau, Executive Director, Philadelphia Commission on Human Relations

10:30 AM-10:40 AM BREAK

10:40 AM-12:00 PM BREAKOUT SESSIONS

FBI Hate Crimes
(Studio 3, 2nd Floor)

This session will discuss the investigation of hate crimes in Seattle and ways the Department is combatting hate. Hate crimes are the highest priority of the FBI’s Civil Rights program, not only because of the devastating impact they have on families and communities, but also because groups that preach hatred and intolerance can plant the seed of terrorism here in our country. The Bureau investigates hundreds of these cases every year and works to detect and deter further incidents through law enforcement training, public outreach, and partnerships with a myriad of community

**Working Across Faiths
to Advance Justice**
(Studio 1 & 2, 2nd Floor)

In today’s challenging political environment, Washington State faith leaders have united as a powerful voice of the faithful building a more just, peaceful and sustainable world. This work builds from the strengths of today’s increasing diversity of cultures and faiths.

**Where Do We
Go from Here:
Defining the Role of Civil
Rights Agencies in
Addressing Hate
Incidents in the
Community**
(Strategy Room, 3rd Floor)

This session will focus on the role of civil rights agencies in addressing the rise in bias incidents in the community. Panel will discuss the important role of civil rights agencies to

groups.

Traditionally, FBI investigations of hate crimes were limited to crimes in which the perpetrators acted based on a bias against the victim's race, color, religion, or national origin. In addition, investigations were restricted to those wherein the victim was engaged in a federally protected activity. With the passage of the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, the Bureau became authorized to investigate these crimes without this prohibition. This landmark legislation also expanded the role of the FBI to allow for the investigation of hate crimes committed against those based on biases of actual or perceived sexual orientation, gender identity, disability, or gender.

Presenter:

Ryan W. Bruett, Supervisory Special Agent
Federal Bureau of Investigation
Seattle Field Office

Moderator: Clarence Henderson,
Commissioner, Washington State Human Rights
Commission

Presenters:

Aneelah Afzali,
Executive Director,
American Muslim
Empowerment Network
(AMEN)

Michael Ramos,
Executive Director
Church Council of
Greater Seattle

Rabbi David Basior,
Director of Education
Kadima Reconstructionist
Community, Seattle

Moderator:

Matias Valenzuela,
Director, Office of Equity
and Social Justice,
Office of the King County
Executive

coordinate community-based efforts to address bias not protected by existing civil rights laws.

Presenters:

Mark C. Bishop,
Michigan Department
of Civil Rights/Michigan
Alliance Against Hate
Crimes

Patty Lally,
Director, Seattle Office
of Civil Rights

Randy Blazak,
Chair Oregon Coalition
Against Hate

Moderator:

Merrill Smith, Jr.,
Chairman Prince George
County Maryland Human
Relations Commission

12:15 PM-1:45 PM Awards Luncheon (Great Room 1, 2nd Floor)

Keynote: Leon Russell, National President
NAACP

Moderator: Carol Johnson, Executive Director, Arkansas Fair Housing Commission

2:00 PM-3:15 PM BREAKOUT SESSIONS

**History of Seattle's
LGBTQ
Rights Movement**
(Studio 1, 2nd Floor)

Marriage Equality became a reality in 2015 when the Supreme Court ruled that same-sex marriage is a legal right in the United States. This was a historic moment for the LGBTQ community; for many it was a day they believed they would never live to see. This session will include a discussion on the history of the LGBTQ movement in Seattle and the barriers that continue to thwart full equality and inclusion.

Transgender 101
(Studio 2, 2nd Floor)

This session will include an overview of transgender terms and motivations. Transgender language is quickly changing. A four-quadrant drawing gives the audience a view of what motivates transgender women to be who they are. The transgender spectrum is overlaid with a view of our sexual orientations because gender identity issues cause a confusing juxtaposition to sexual orientation within the community.

**LGBTQ
Employment
Discrimination**
(Studio 3, 2nd Floor)

This session will focus on EEOC's guidance on LGBTQ discrimination and similar cases at the Seattle Field Office of the EEOC. The session will also provide an overview of what is ahead in the region, the San Francisco district of the EEOC and across the nation.

Presenter:

Molly B. Powell,
Administrative Judge
U.S. Equal Employment
Opportunity Commission
Seattle Field Office

**U.S. Consumer Financial
Protection Bureau
AGS and Financial
Institutions and
Regulators**
(Strategy Room, 3rd Floor)

This session will discuss the work of the Consumer Financial Protection Bureau and litigation the Bureau is pursuing in federal court; highlighting cases in the Pacific Northwest.

Presenters:

**Frank
Vespa-Papaleo**,
Deputy Director, Civil
Rights Division

Presenter:
Charlene Strong,
Commissioner

Moderator:
Kimberly Taylor-Riley,
Director of Equity and
Diversity, Lincoln,
Nebraska

Presenters:
Karen Williams
Dr. Deborah Smith
Mac McGregor
Alyssa Lee

Moderator:
Rue Landau,
Executive Director,
Philadelphia Human
Relations Commission

Moderator:
Cheryl Strobert,
Deputy Director,
Washington State
Human Rights
Commission

Je Yon Jung, West
Region Senior Fair
Lending Counsel Office
of Fair Lending and
Equal Opportunity
Consumer Financial
Protection Bureau

Moderator:
Jean Kelleher,
Director, Alexandria
Human Rights Commission

3:45 PM **Depart For Daybreak Star Cultural Center**

3:45 PM-8:00 PM **Daybreak Star**

Blessing and Welcome (4:15)

Tulalip Drummers (4:30)

Environmental Racism- Water is Life and a Human Right (4:45)

This panel will discuss how implicit bias plays a role in environmental policy and decision-making from the Flint Water Crisis to Standing Rock. Panelists will discuss how these policies have had a detrimental effect on communities and reservations. You will hear about the Standing Rock litigation, the banks that financed the Dakota Pipeline and how Native American activists continue the struggle to protect the earth for us all.

Jan Hassleman, Attorney, Earth Justice

Dr. Augustin Arbulu, Director, Michigan Department of Civil Rights

Twa-le Abrahamson-Swan, SHAWL Society, Spokane Tribe

Matt Remle, Educator/Activist/Author, Hunkpapa Lakota

Moderator: Lenore Three Stars, Commissioner, Washington State Human Rights Commission

Dinner: Famous Dave's BBQ & Traditional Salmon

Honor Ceremony - Senator John McCoy

8:15 PM **Return To Hotel**

Thursday, September 28, 2017

7:30 AM-8:30 AM **Continental Breakfast** (Pre-function Great Room 1, 2nd Floor)

8:30AM-10:00 AM **Plenary Session** (Great Room 1, 2nd Floor)

Report Of States: Taking The Civil Rights Temperature Across The Nation

This presentation will showcase how IAOHRA member agencies can partner with academia and nonprofits to develop a strategy and tool useful to them and their governments in identifying racial inequities that need priority attention for remedies and resources. The case study will be the Advancement Project's Race Counts reports on major jurisdictions among California's counties, including Los Angeles, San Francisco, Santa Clara, Orange County and San Diego.

Moderator: Kimberly Taylor-Riley, Director of Equity and Diversity, Lincoln, Nebraska
Race Counts: Catalyzing Actions on Racial Equity by your Government

Presenter: John Kim, Executive Director of the Advancement Project's California Office

CONFERENCE ADJOURN

The Los Angeles County Board of Supervisors and the
Los Angeles County Commission on Human Relations invite you to the

John Anson Ford Human Relations Awards & Reception

Tuesday, October 10th at 11:00am

Kenneth Hahn Hall of Administration
8th Floor Balcony
500 West Temple Street,
Los Angeles, California 90012

**Board Presentation to follow at 1:00pm at
Hearing Room, 3rd Floor, Room #381B**

Please join us for the celebration of exemplary
change-makers and innovators for their
contributions towards transforming prejudice into
acceptance, inequity into justice, and hostility into
peace.

In order to secure parking at the Music Center
please **RSVP by Monday, October 2nd.**

For questions, contact Yuisa Gimeno at
(213) 663-9596 or ygimeno@wdlacs.lacounty.gov

2017 Honorees

Yvonne B. Burke Courage Award:

Claudia Rueda, DACA youth activist
W. Kamau Bell, Host of CNN's
"United Shades of America"

John Allen Buggs Leadership Award:

Vaka Faletau, Tongan community
advocate at Los Angeles County's
Children and Family Services (DCFS)

1st Supervisorial District: Santee High

**School's Gay-Straight Alliance
(GSA) Club;** Won first L.A. public
school all-gender bathroom

2nd Supervisorial District: Community

**Coalition's 25th anniversary
commemoration project of 1992
L.A. Uprising;** Engaging activism,
art and music festival

3rd Supervisorial District: Somos

**Familia Valle's Youth and Parent
Leadership Project;** First LGBTQ
people of color organization in San
Fernando Valley founded and led by
immigrant youth

4th Supervisorial District: Educated

**Men of Meaningful Messages
(EM3) program;** Gender-based
violence prevention program for
Cambodian young men

5th Supervisorial District: Center for

**Conflict Resolution's
Hindenburg Park Sign Mediation
project;** Finding common ground in
public controversy over park sign



Los Angeles County

Commission on Human Relations

Department of Workforce Development, Aging Community Services
3175 West Sixth Street, Suite 406
Los Angeles, CA 90020

(213) 738-2788

Ad Hoc Committee on Policing and Human Relations

Meeting Notice

Monday October 2, 2017
11:00 a.m.

Department of Workforce Development, Aging Community Services
3175 West Sixth Street, Teamwork Room 301
Los Angeles, California 90020

Members: Commissioners Melina Abdullah (Chair), Cynthia Anderson-Barker, Adrian Dove, Isabelle Gunning, Sandra Thomas

Staff: Robin Toma, Ray Regalado, Yuisa Gimeno, Joshua Parr, Emily Pacheco

AGENDA

1. Women/LGBTQ Hearing Debrief
2. Law Enforcement Hearing Update
3. Academic Advisor Contractor Update

September 6th, 2017

TO: Robin Toma, Assistant Director
Human Relations Branch

FROM: Vera Castillo, Legislative Analyst

RE: SB 785 (Wiener) – Evidence: Immigration Status

BILL SUMMARY

Existing law provides that all relevant evidence is admissible in an action before the court, including evidence relevant to the credibility of a witness or hearsay declaring subject to specified exceptions. Existing law also provides that, in civil actions for personal injury or wrongful death, evidence of a person's immigration status is not admissible and discovery of a person's immigration status is not permitted.

In civil actions other than those specified above, this bill would prohibit the disclosure of a person's immigration status in open court by a party unless the party seeking the disclosure first requests a confidential in camera hearing and the presiding judge determines that the evidence is relevant and admissible. This bill would apply this prohibition to criminal actions, but would also include a prohibition on the inclusion of a person's immigration status in public court records. The provisions of the bill would be repealed on January 1, 2022.

The California Constitution provides for the Right to Truth-in-Evidence, which requires a 2/3 vote of the Legislature to exclude any relevant evidence from any criminal proceeding, as specified.

Because this bill may exclude from a criminal action information about a person's immigration status that would otherwise be admissible, it requires a 2/3 vote of the Legislature.

This bill would declare that it is to take effect immediately as an urgency statute.

CURRENT STATUS

Referred to the Assembly Committees on Public Safety and Judiciary. The bill has not been scheduled for a hearing in either one of these committees.

Date of Vote	Location	Ayes	Noes	Not Voting	Absent
5/16/2017	Senate Public Safety Committee	5	2	0	0
7/18/2017	Senate Judiciary Committee	5	1	1	0
8/28/2017	Senate Floor	32	7	1	0

NEXT CRITICAL STEP

AB 785 needs to clear these two committees and is subject to the January deadline (towards the end of the month) when each house has to pass bills introduced in that house in 2017.

REGISTERED SUPPORT/OPPOSITION**SUPPORT**

San Francisco District Attorney's Office (source)
Californians for Safety and Justice
City and County of San Francisco Department on the Status of Women
Coalition for Humane Immigrant Rights
Equal Justice Society
Mixteco-Indigena Community Organizing Project
PICO California
Public Law Center
San Diego La Raza Lawyers Association
San Francisco Domestic Violence Consortium
Tahirih Justice Center
YWCA Glendale

OPPOSITION

None received

SENATE RULES COMMITTEE

Office of Senate Floor Analyses

(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: SB 785**Author:** Wiener (D), et al.**Amended:** 8/22/17**Vote:** 27 - Urgency

SENATE PUBLIC SAFETY COMMITTEE: 5-2, 5/16/17**AYES:** Skinner, Bradford, Jackson, Mitchell, Wiener**NOES:** Anderson, Stone**SENATE JUDICIARY COMMITTEE:** 5-1, 7/18/17**AYES:** Jackson, Hertzberg, Monning, Stern, Wieckowski**NOES:** Anderson**NO VOTE RECORDED:** Moorlach

SUBJECT: Evidence: immigration status**SOURCE:** San Francisco District Attorney's Office

DIGEST:

This bill prohibits the inclusion of a person's immigration status in a public court record or included in public court records by a party except as first authorized by a court's ruling, as provided.

ANALYSIS:

Existing law:

- 1) States that only relevant evidence is admissible, and except as otherwise provided by statute, all relevant evidence is admissible. (Evid. Code, §§ 350, 351.)

- 2) Provides that relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post-conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court, subject to the existing statutory role of evidence relating to privilege or hearsay, or inadmissibility. (Cal. Const., art. I, § 28, as adopted June 8, 1982.)
- 3) Defines “relevant evidence” means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evid. Code, § 210.)
- 4) Authorizes a court in its discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. (Evid. Code, § 352.)
- 5) Allows the credibility of a witness to be attacked or supported by any party including the party calling him. (Evid. Code, § 785.)
- 6) Provides for the following procedure if evidence of sexual conduct of the complaining witness is offered to attack the credibility of the complaining witness in specified sex offense cases:
 - a) A written motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness.
 - b) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated. The affidavit shall be filed under seal and only unsealed by the court to determine if the offer of proof is sufficient to order a hearing as provided below. After that determination, the affidavit shall be resealed by the court.
 - c) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at the hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant.
 - d) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant, and is not inadmissible, the court may make an order stating what

evidence may be introduced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the court order.

- e) An affidavit resealed by the court shall remain sealed, unless the defendant raises an issue on appeal or collateral review relating to the offer of proof in the sealed document, as provided. (Evid. Code, § 782, subd. (a).)

This bill:

- 1) Provides that in a criminal case, evidence of a person's immigration status shall not be disclosed in open court or included in public court records by a party except as first authorized by a court's ruling as specified below:
 - a) A party seeking the disclosure of a person's immigration status shall request a confidential in camera hearing at which the judge presiding over the matter shall determine if the evidence is relevant and admissible.
 - b) If the judge decides at the hearing that the evidence is relevant and admissible, the evidence may be disclosed in open court and in public court records.
 - c) If the judge decides at the hearing that the evidence is irrelevant or inadmissible, the moving party may object to the ruling and may preserve the objection in camera on the record, with the record to be kept confidential pursuant to the California Rules of Court.
- 2) Specifies that the provisions in this bill related to criminal actions do not:
 - a) Apply to cases in which a person's immigration status is necessary to prove an element of an offense or an affirmative defense;
 - b) Limit discovery in a criminal action;
 - c) Affect obligations imposed by existing law specifying the purposes of discovery;
 - d) Prohibit an individual from voluntarily revealing his or her immigration status to the court;
 - e) Affect the standards of relevance, admissibility, or discovery; or,
 - f) Prohibit an individual or his or her attorney from voluntarily revealing his or her immigration status to the court.

- 3) States that in a civil case, except for in cases of personal injury or wrongful death, evidence of a person's immigration status shall not be disclosed in open court by a party except as first authorized by a court's ruling as provided below:
 - a) A party seeking the disclosure of a person's immigration status under this section shall request a confidential in camera hearing at which the judge presiding over the matter shall determine if the evidence is relevant and admissible.
 - b) If the judge decides at the hearing that the evidence is relevant and admissible, the evidence may be disclosed in open court.
 - c) If the judge decides at the hearing that the evidence is irrelevant or inadmissible, the moving party may object to the ruling and may preserve the objection in camera on the record, with the record to be kept confidential pursuant to the California Rules of Court.
- 4) States that the provisions of this bill related to civil actions do not prohibit an individual or his or her attorney from voluntarily revealing his or her immigration status to the court.
- 5) Sunsets its provisions on January 1, 2022.
- 6) Contains an urgency clause.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 8/23/17)

San Francisco District Attorney's Office (source)
Californians for Safety and Justice
City and County of San Francisco Department on the Status of Women
Coalition for Humane Immigrant Rights
Equal Justice Society
Mixteco-Indigena Community Organizing Project
PICO California
Public Law Center
San Diego La Raza Lawyers Association
San Francisco Domestic Violence Consortium
Tahirih Justice Center
YWCA Glendale

OPPOSITION: (Verified 8/23/17)

None received

Prepared by: Stella Choe / PUB. S. /
8/23/17 16:19:17

**** **END** ****

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2017-2018 Regular Session

SB 785 (Wiener)
Version: July 10, 2017
Hearing Date: July 18, 2017
Fiscal: No
Urgency: Yes

SUBJECT

Evidence: immigration status

DESCRIPTION

This bill would prohibit the disclosure of evidence relating to immigration status in open court until after a confidential, in camera hearing and judicial ruling that the evidence is relevant and not inadmissible.

BACKGROUND

The fair and effective administration of justice requires that all participants in the process feel free and secure to present their case or provide their testimony before the court. For years, however, many undocumented immigrants have been hesitant to take part in the formal legal system for fear that doing so would expose their legal status publicly and result in detention or deportation.

Recent shifts in federal immigration enforcement policies have greatly exacerbated the problem. Whereas, previously, federal immigration officers had focused on detaining serious criminals, the new policies cast a much broader, less discerning net.¹ To make matters worse, in spite of pleas from California's Chief Justice, Tani Cantil-Sakauye, for them to stop, federal immigration officials have made it clear that they will continue to conduct immigration

¹ Compare Johnson, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants* (Nov. 20, 2014) U.S. Department of Homeland Security <https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf> (as of June 18, 2017), with Kelly, *Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 20, 2017) U.S. Department of Homeland Security p.2 <https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf> (as of June 18, 2017).

enforcement actions at California courthouses.² As a result, undocumented immigrants are even less likely than ever to participate in the state's legal system.

California has reacted to this dynamic by imposing restrictions on the use of evidence regarding people's immigration status. Last year, for example, the Legislature passed AB 2159 (Gonzalez, Ch. 132, Stats. 2016), which prohibits the use of immigration status evidence in personal injury and wrongful death lawsuits. During this session, the Legislature is considering other measures, such as AB 291 (Chiu, 2017) and AB 1690 (Assembly Committee on the Judiciary, 2017), for instance, that clamp down on the use of immigration status evidence as a method for intimidating people from exercising their legal rights.

In these ways, California has tried to prevent the introduction of immigration status evidence for nefarious or unnecessary purposes. In some circumstances, however, the immigration status of a witness or party to a legal matter may be appropriate and necessary for the court to consider. As with all other evidence, when one party to a case seeks to introduce evidence about immigration status and the other party objects, it is up to a judge to determine whether or not to permit the evidence. The problem, however, is that in the case of evidence about immigration status, the very discussion of whether or not the evidence should be considered can serve to intimidate the witness or party in question, since the hearing and the resulting record are public.

To help all Californians feel more secure participating in the legal system, regardless of their immigration status, this bill would put an extra procedural safeguard in place. Rather than permitting parties to begin questioning or discussing the immigration status of any other party or witness in open court, SB 785 would require the party seeking to introduce the evidence to request a confidential, in camera hearing, during which the judge would make a determination as to whether or not the evidence is relevant and admissible. If the judge rules the immigration status evidence to be relevant and admissible, the case would proceed accordingly. If the judge rules that the immigration status evidence is not relevant, both the evidence itself, and the discussion of whether to admit it would remain confidential.

This bill passed out of the Senate Committee on Public Safety by a 5 to 2 vote.

CHANGES TO EXISTING LAW

Existing law states that only relevant evidence is admissible, and except as otherwise provided by statute, all relevant evidence is admissible. (Evid. Code Secs. 350, 351.)

Existing law provides that relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post-conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court, subject

² Kopan, *Trump Administration Says ICE Courthouse Arrests Will Continue* (Mar. 31, 2017) CNN <<http://www.cnn.com/2017/03/31/politics/ice-arrests-courthouses-sessions-kelly/>> (as of July 15, 2017).

to the existing statutory role of evidence relating to privilege or hearsay, or inadmissibility. (Cal. Const., art. I, Sec. 28.)

Existing law defines “relevant evidence” as evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evid. Code Sec. 210.)

Existing law authorizes a court in its discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. (Evid. Code Sec. 352.)

Existing law allows the credibility of a witness to be attacked or supported by any party including the party calling the witness. (Evid. Code Sec. 785.)

Existing law establishes that in determining the credibility of a witness and except as otherwise provided by law, the court or jury may consider any matter that has any tendency to prove or disprove the truthfulness of the witness’ testimony, including but not limited to:

- the witness’ demeanor while testifying and the manner in which the witness testifies;
- the character of the witness’ testimony;
- the extent of the witness’ capacity to perceive, to recollect, or to communicate any matter about which he or she testifies;
- the extent of the witness’ opportunity to perceive any matter about which the witness testifies;
- the witness’ character for honesty or veracity or their opposites;
- the existence or nonexistence of a bias, interest, or other motive;
- any statement previously made by the witness that is consistent with the witness’ testimony at the hearing;
- any statement made by the witness that is inconsistent with any part of the witness’ testimony at the hearing;
- the existence or nonexistence of any fact testified to by the witness;
- the witness’ attitude toward the action in which the witness testifies or toward the giving of testimony; or
- the witness’ admission of untruthfulness. (Evid. Code Sec. 780.)

Existing law provides that in a civil action for personal injury or wrongful death, evidence of a person’s immigration status shall not be admitted into evidence, nor shall discovery into a person’s immigration status be permitted. (Evid. Code Sec. 351.2.)

Existing law provides that for purposes of enforcing state labor, employment, civil rights, and employee housing laws, a person’s immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those state laws no inquiry shall be

permitted into a person's immigration status except where the person seeking to make this inquiry has shown by clear and convincing evidence that this inquiry is necessary in order to comply with federal immigration law. (Civil Code Section 3339(b); Government Code Section 7285(b); Health & Safety Code Section 24000(b); Labor Code Section 1171.5(b).)

This bill would prohibit parties to a civil or criminal action from disclosing evidence regarding the immigration status of any other party or witness in open court, unless the party first requests a confidential, in camera hearing and ruling as to whether the evidence is relevant and not inadmissible.

This bill would not restrict individuals or parties from voluntarily revealing their immigration status to the court.

This bill would not alter existing laws regarding the relevance and admissibility of evidence regarding immigration status.

This bill would not alter existing laws regarding discovery in either the civil or criminal contexts.

This bill would not apply to a case in which a person's immigration status is necessary to prove an element of an offense or an affirmative defense.

This bill would not apply to bail hearings in which a person's immigration status is relevant to determining the person's flight risk.

This bill would take effect immediately upon enactment, as an urgency measure.

COMMENT

1. Stated need for the bill

According to the author:

SB 785 will make a procedural change to the code of civil procedure to prevent irrelevant information about a person's immigration status from being included in a public court record. In order to include evidence of a person's immigration status in a court proceeding, the party seeking its inclusion would need to obtain a ruling by the presiding judge at an in camera hearing that the evidence is relevant. This bill does not prohibit an individual from voluntarily revealing his or her own immigration status in court, and SB 785 would apply to both civil and criminal cases.

In March 2017, Supreme Court Justice Tani Cantil-Sakauye sent a letter to U.S. Attorney General Jeff Sessions and Homeland Security Secretary John Kelly expressing concern over reports of immigration agents

stalking undocumented immigrants in California courthouses. Chief Justice Cantil-Sakauye said, “Our courthouses serve as a vital forum for ensuring access to justice and protecting public safety. Courthouses should not be used as bait in the necessary enforcement of our country’s immigration laws.”

When an individual’s immigration status is publicly aired in our courthouses, some officers of the courts are chilling the participation by undocumented immigrants by conveying to them that their participation in our courts may lead to their deportation. All Californians need to have safe access to our courts. When our residents feel apprehension or fear when participating in our system of justice, our collective public safety is undermined. This is a complicated issue, but we have been speaking to the defense side, district attorneys, judges, judicial counsel, and immigrant rights advocates to gather feedback and create a policy that works for everyone.

In support, the Equal Justice Society writes:

70 percent of undocumented immigrants are already less likely to contact law enforcement authorities if they were victims of a crime. The fact that immigration status may be publicly broadcasted in a courtroom prior to a preliminary determination of relevance further dissuades victims and witnesses from coming forward and seeking justice. An individual’s country of origin has no bearing on whether they are suitable to take the stand. This proposed legislation ensures individuals from all backgrounds in our community can comfortably come forward and play an integral role in our justice system. It also ensures that where relevant, evidence pertaining to an individual’s immigration status will be admitted.

2. Examples of the problem that the bill purports to address

Although this bill’s procedural safeguards around the disclosure of evidence of immigration status would apply to civil proceedings as well, the immediate impetus for the bill springs from criminal matters. Specifically, the bill responds to tactics employed by the San Francisco Public Defender’s Office, and perhaps in other jurisdictions as well, in which defense counsel introduces evidence about a victim or witness’ immigration status in order to raise doubts about the victim or witness’ credibility. It is not the victim or witnesses’ immigration status as such that forms the basis for attack on credibility, but rather the fact that, in certain circumstances, an undocumented victim or witness may receive some form of immigration relief, usually in the form of a U or T visa, as a result of cooperating with law enforcement in the prosecution of the case. Law enforcement must provide certification of this cooperation.

From defense counsel's point of view, that dynamic could raise a reasonable inference that the victim or witness has a motive to make false allegations or to testify in ways that will please the prosecution.

In an April 2017 article entitled "SF Courts Anything But Safe for Some Immigrants in Sanctuary City," the San Francisco Chronicle reported on several specific cases in which this dynamic unfolded:

- In a case against a man, who in 2015 was sentenced to 65 years to life for posing as a police officer to sexually assault recent Central American immigrants, the public defender's office asked a victim about his U visa knowledge. When the victim said he only learned of the U visa on television long after reporting the crime, the defense attorney asked him what channel, what program, what time and whether it was in the morning or night.
- In an ongoing case against a man accused of multiple accounts of sexual assault against an underage girl living here without documents, the public defender's office has subpoenaed the district attorney for any records related to U visa applications, including any conversations between victim's advocates and the girl.
- And in a case this year that ended in a hung jury, a man was accused of misdemeanor battery against a woman who entered the country without prior legal authorization. The district attorney persuaded the judge to disallow a reference to her immigration status and the U visa program, which she hadn't applied for, because it "can only be used, intentionally or unintentionally, to intimidate and dissuade her and to jeopardize her safety," according to court records.³

The San Francisco Public Defender, which has invested resources into immigration defense programs, defends the use of these tactics as not only appropriate, but part of its ethical duty to provide competent and zealous defense of its clients who are facing criminal charges. In the San Francisco Chronicle article, the Executive Director of the National Association of Public Defenders is quoted as saying that investigating witnesses' biases and motivations for fabricating a story is "a bedrock and fundamental" part of the public defender's role. "To do less would be to provide ineffective assistance of counsel."

The proponents of this bill do not dispute that defense counsel has a duty to investigate and raise any possible doubts about the credibility of a witness. They agree that, once a judge has determined it is relevant and not inadmissible, then the introduction of evidence about a witnesses' immigration status must be permitted. They view this bill as a simple procedural

³ Knight, *SF Courts Anything But Safe for Some Immigrants in Sanctuary City* (April 2, 2017) San Francisco Chronicle <<http://www.sfchronicle.com/news/article/SF-courts-anything-but-safe-for-some-immigrants-11045155.php>> (as of July 15, 2017).

safeguard that would ensure that evidence about a witnesses' immigration status is not disclosed publicly until the determination as to relevance and admissibility has been made.

3. Considering possible impacts beyond the procedural

If the bill merely imposes a procedural safeguard, it is arguably difficult to see how it is objectionable. It would simply prevent irrelevant or otherwise inadmissible evidence from being disclosed publicly and thereby chilling the participation of undocumented parties and witnesses in court. There would be some minimal additional administrative burden on the court system, since the bill does impose a new procedural step for the introduction of certain types of evidence, but handling confidential, in camera proceedings is neither novel nor unprecedented for the courts.

Viewed more skeptically, however, the procedural safeguard could be seen as having a substantive impact. If judges interpreted the bill and the extra procedures, consciously or subconsciously, as an indication that they should be less inclined to find evidence of immigration status relevant and admissible, the bill might shift those substantive determinations in favor of exclusion of the evidence. From a skeptical point of view, the same dynamic could also influence what prosecutor's turn over to defense counsel by way of discovery.

To guard against both of these possibilities, provisions in the bill explicitly highlight that it does not affect discovery obligations and does not alter the standards of relevance, admissibility, and discovery.

4. Removing an evidentiary decision from the public eye

The bill establishes a structure whereby a decision regarding what evidence gets introduced at trial is made confidentially. If the judge determines that evidence of a party or witness' immigration status is not relevant or is otherwise inadmissible, both the evidence itself as well as the deliberation and ruling on the matter will remain confidential.

Arguably, this conflicts with the general rule that courtroom proceedings are open to the public. (*Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 580.) There are, however, other contexts in which the Legislature has determined that important overriding privacy and policy considerations justify making confidential a judge's deliberation about whether or not to permit the introduction of certain evidence. (See, e.g., Evid. Code Sec. 782, subd. (a) (motion to introduce evidence of past sexual conduct against a victim of sexual assault); Evid. Code Sec. 1060 et seq. (motion regarding the introduction of evidence that may constitute a trade secret).)

While the potential chilling effect from the introduction of evidence of immigration status arguably presents similarly overriding interests, the unique nature of immigration status

makes it difficult to pattern this bill after those exact procedures. The problem, specifically, is that while one can make a motion regarding introduction of trade secret evidence or sexually related conduct without revealing the underlying secret or conduct, there is no obvious way to present a motion to introduce evidence about immigration status without the motion itself revealing the basic information that the process is intended to keep out of the public eye.

Instead, this bill would simply treat the motion seeking introduction of the evidence about immigration status as well as the evidence itself confidentially, revealing it only if the judge determines that the evidence is relevant and admissible. As with other confidential evidence, the record of the evidence offered, the motion seeking its introduction, the judge's ruling, and any objections would be available to the parties to the suit in the event of an appeal. It just would not be available to the public.

5. ICE tactics in courthouses

While this bill arguably creates an important procedural safeguard, it is important to note that it does not address the broader problem articulated by the Chief Justice. There is no evidence that ICE agents sit in the back of courtrooms waiting for witnesses to admit to being undocumented on the witness stand. Rather, ICE officials' comments and ICE tactics suggest that ICE comes to the courthouses to apprehend specific individuals, targeted in advance, for reasons of convenience and security.

ICE may not know where a person they are seeking lives or works. If ICE does know this information, they may not know when they can find the person at that location. Furthermore, people have constitutional rights in their homes and workplaces that make it more difficult, absent a warrant, for ICE to reach the person they are seeking. Finally, ICE cannot be certain that a person apprehended at home or at work will not be armed with weapons of some sort. In contrast, courthouse dockets are public, online, and typically searchable. With a few clicks of a mouse, ICE can know exactly where and when to locate the person. The location is public, so no warrant will be required to enter. The person will have to pass through security to enter the courthouse, so it is unlikely that the person will be armed. Finally, the person is likely to respond to roll call or questions from the bench in the courtroom, thus providing ICE with the identity of the person without even having to ask. All of these factors make courthouses very attractive places for ICE.

This bill does not impact the primary things that make courthouses so attractive to ICE, so ICE will almost certainly remain active and present there even if the bill is enacted. This is not a criticism of the bill, but simply a note that more will need to be done if the Legislature hopes to respond fully to the Chief Justice's point and wants to find a solution to ICE's ongoing use of California courthouses as "bait."

6. Amendments

In order to reduce potential confusion, improve logistical functionality, increase consistency in the bill's applicability, and ensure legislative review of the bill's impact before its terms apply indefinitely, the author may wish to consider the following amendments to the bill, to be taken in Committee. Those amendments would:

- ³⁵₁₇ recast the bill's provisions as two new evidence code sections, one addressing civil cases and the other addressing criminal cases;
- ³⁵₁₇ make the motion, in camera hearing, and judicial determination a confidential part of the case record, rather than placing them under seal;
- ³⁵₁₇ eliminate the exception for bail hearings; and
- ³⁵₁₇ place a five year sunset provision on the bill.

The specific amendments are:

Amendment 1

In the title, in line 1, strike out "amend Section 351.2 of, and to add Section 351.3 to," and insert:
add Sections 351.3 and 351.4 to

Amendment 2

On page 2, strike out lines 1 to 19, inclusive, on page 3, strike out lines 4 to 11, inclusive, and insert:

SECTION 1. Section 351.3 is added to the Evidence Code, to read:

351.3. (a) (1) In a civil action not governed by Section 351.2, evidence of a person's immigration status shall not be disclosed in open court by a party except as first authorized by a court's ruling pursuant to paragraph (2).

(2) (A) A party seeking the disclosure of a person's immigration status under this section shall request a confidential in camera hearing at which the judge presiding over the matter shall determine if the evidence is relevant and admissible.

(B) If the judge decides at the hearing described in subparagraph (A) that the evidence is relevant and admissible, the evidence may be disclosed in open court.

(C) If the judge decides at the hearing described in subparagraph (A) that the evidence is irrelevant or inadmissible, the moving party may object to the ruling and may preserve the objection in camera on the record, with the record to be kept confidential pursuant to subdivision (b) of Section 2.585 of the California Rules of Court.

(b) This section does not prohibit an individual or his or her attorney from voluntarily revealing his or her immigration status to the court.

(c) This section is repealed as of January 1, 2022.

Amendment 3

On page 3, in line 12, strike out "351.3" and insert:

351.4

Amendment 4

On page 3, in line 12, strike out "Elections" and insert:
Evidence

Amendment 5

On page 3, in line 13, strike out "351.3." and insert:
351.4.

Amendment 6

On page 3, in line 13, after "(a)" insert:
(1)

Amendment 7

On page 3, in line 14, strike out "unless the", strike out lines 15 to 18, inclusive, and insert:

or included in public court records by a party except as first authorized by a court's ruling pursuant to paragraph (2).

(2) (A) A party seeking the disclosure of a person's immigration status under this section shall request a confidential in camera hearing at which the judge presiding over the matter shall determine if the evidence is relevant and admissible.

(B) If the judge decides at the hearing described in subparagraph (A) that the evidence is relevant and admissible, the evidence may be disclosed in open court and in public court records.

(C) If the judge decides at the hearing described in subparagraph (A) that the evidence is irrelevant or inadmissible, the moving party may object to the ruling and may preserve the objection in camera on the record, with the record to be kept confidential pursuant to subdivision (b) of Section 2.585 of the California Rules of Court.

Amendment 8

On page 3, strike out lines 23 and 24, in line 25, strike out "(3)" and insert:
(2)

Amendment 9

On page 3, in line 26, strike out "(4)" and insert:
(3)

Amendment 10

On page 3, in line 28, strike out "(5)" and insert:
(4)

Amendment 11

On page 3, in line 29, strike out “(6)” and insert:
(5)

Amendment 12

On page 3, after line 31, insert:
(c) This section is repealed as of January 1, 2022.

Support: Bay Area Legal Aid; Californians for Safety and Justice; City and County of San Francisco Department on the Status of Women; Coalition for Humane Immigrant Rights; Equal Justice Society; Mixteco-Indigena Community Organizing Project; PICO California; San Diego La Raza Lawyers Association; the San Francisco Domestic Violence Consortium; Tahirih Justice Center; YWCA Glendale

Opposition: None known

HISTORY

Source: San Francisco District Attorney George Gascón

Related Pending Legislation:

AB 1690 (Assembly Committee on the Judiciary, 2017) would codify case law indicating that evidence of immigration status is irrelevant for the purposes of establishing liability when enforcing consumer protection state labor, employment, civil rights, consumer protection, and housing laws, and that no inquiry shall be permitted into a person’s immigration status, unless it is necessary in order to comply with federal immigration laws. AB 1690 is currently pending a concurrence vote on the Assembly Floor.

AB 291 (Chiu, 2017) would, among other things, prohibit a landlord or a landlord’s attorney from seeking to introduce evidence of a tenant’s immigration status against them in a residential housing legal dispute.

Prior Legislation:

AB 2159 (Gonzalez, Chapter 132, Statutes of 2016) established that, in civil actions for personal injury or wrongful death, evidence of a person’s immigration status is not admissible and discovery of a person’s immigration status is not permitted.

AB 560 (Gomez, Chapter 151, Statutes of 2015) provided that the immigration status of a minor child seeking recovery under any applicable law is irrelevant to the issues of liability or remedy and prohibited discovery or other inquiry in a civil action or proceeding into a minor child’s immigration status.

> (>)

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Prior Vote:

Senate Public Safety Committee (Ayes 5, Noes 2)

September 6th, 2017

TO: Robin Toma, Assistant Director
Human Relations Branch

FROM: Vera Castillo, Legislative Analyst

RE: SB 491 (Bradford) - Civil Rights: Discrimination: Enforcement

BILL SUMMARY

This bill would provide that a local government entity is permitted under the California Fair Employment and Housing Act to refer a person alleging discrimination to the department and to provide the person with relevant information and resources, as appropriate.

The bill would require the department, by April 1, 2018, to establish an advisory group, as specified, to determine the feasibility of authorizing local government entities to also enforce antidiscrimination statutes. The bill would require the advisory group, if it determines that such enforcement is feasible, to develop an implementation plan and draft proposed legislation for presentation to the Legislature by December 31, 2018.

CURRENT STATUS

Assembly Third Reading File

(The 'Third Reading File' refers to bills that are ready to be taken up for final passage.)

Date of Vote	Location	Ayes	Noes	Not Voting	Absent
5/19/2017	Senate Judiciary Committee	7	0	0	0
5/26/2017	Senate Floor	37	0	3	0
7/11/2017	Assembly Judiciary Committee	11	0	0	0
9/1/2017	Assembly Appropriations Committee	13	0	4	0

NEXT CRITICAL STEP

AB 491 will be voted by the full Assembly and then sent back to the Senate for concurrence on amendments before being forwarded to the Governor. The bill was amended in the Assembly on July 7th. The amendments must be concurred by the house of origin. September 15th is the last day for each house to pass bills.

REGISTERED SUPPORT/OPPOSITION

Support

Los Angeles Black Workers Center (co-sponsor)
SEIU (co-sponsor)
African American Cultural Center
Alliance of Boys and Men of Color
Alliance for Boys and Men of Color, Riverside County
Anti-Defamation League
Black Community, Clergy, and Labor Alliance
California Labor Federation
Courage Campaign

Fathers & Families of San Joaquin
IDEPSCA
Koreatown Immigrant Workers Alliance
NAACP, California Conference
National Employment Law Project
PolicyLink
Restaurant Opportunities Center of Los Angeles
Shields for Families
Strategic Concepts in Organizing and Policy Education
United Food and Commercial Workers Union, Local 770
Voices for Progress Education
Warehouse Worker Resource Center
Western Center on Law and Poverty
Women's Foundation of California

Opposition - None on file

Date of Hearing: July 11, 2017

ASSEMBLY COMMITTEE ON JUDICIARY

Mark Stone, Chair

SB 491

(Bradford) – As Amended July 6, 2017

As Proposed to be Amended

SENATE VOTE: 37-0

SUBJECT: CIVIL RIGHTS: DISCRIMINATION: ENFORCEMENT

KEY ISSUES:

- 1) SHOULD THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING ESTABLISH AN ADVISORY GROUP TO DETERMINE THE FEASIBILITY OF AUTHORIZING LOCAL GOVERNMENTS TO ENFORCE ANTI-DISCRIMINATION STATUTES?
- 2) SHOULD THE FAIR EMPLOYMENT AND HOUSING ACT BE AMENDED IN ORDER TO CLARIFY THAT LOCAL GOVERNMENT ENTITIES MAY REFER A PERSON ALLEGING DISCRIMINATION TO THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING FOR INFORMATION ON FILING A COMPLAINT, AND TO ASSIST THAT PERSON TO THE EXTENT PERMITTED BY LAW?

SYNOPSIS

Under California's Fair Employment and Housing Act (FEHA), the Department of Fair Employment and Housing (DFEH) is authorized to make rules and regulations relating to workplace and housing discrimination, as well as to receive complaints of discrimination, investigate those complaints, and take appropriate remedial action. FEHA expressly states that it "occupies the field" of regulation (with "regulation" generally understood to include "enforcement"). While local governments are expressly authorized to bring actions against discrimination under the Unruh Civil Rights and related civil rights statutes, they cannot regulate and enforce the provisions of FEHA – a comprehensive statutory framework that sets forth the procedures and timelines for filing complaints, providing notice, conducting hearings and investigations, encouraging mediation, and, if necessary, taking enforcement actions. However, as the author and supporters point out, DFEH has limited resources and cannot carry every complaint through to resolution. The author and sponsor believe that allowing local government officials to enforce FEHA will provide additional tools and resources to combat housing and workplace discrimination. This bill would require DFEH to establish, not later than April 1, 2018, an advisory group to study the idea of allowing local government entities to enforce anti-discrimination statutes and, in the meantime, to clarify that local governments may engage in certain activities that support the DFEH mission to prohibit employment and housing discrimination. This bill is co-sponsored by SEIU and the Los Angeles Black Workers Center and supported by several civil rights and labor groups. There is no opposition to this bill. The author will take minor technical amendments that are reflected in the summary and analysis.

SUMMARY: Establishes an advisory group to determine the feasibility of authorizing local government entities to enforce anti-discrimination statutes and makes supporting findings, declarations, and clarifications. Specifically, **this bill**:

- 1) Requires the Department of Fair Employment and Housing (DFEH) to establish an advisory group to study the feasibility of authorizing local government entities to enforce antidiscrimination statutes. Specifies that the advisory group shall be established no later than April 1, 2018, and shall consist of at least one member of DFEH and civil rights, employer, and employee advocates. If the advisory group concludes that enforcement by local entities is feasible, it shall draft proposed legislation and report to the Legislature, as specified.
- 2) Requires the study referenced above to include a survey of local government entities to inquire about the types of activities that they currently engage in or expect to engage in relative to the Fair Employment and Housing Act (FEHA), including the following activities: providing culturally appropriate outreach and education about rights under FEHA; advising persons about statutory time limits for complaints; referring persons to DFEH; investigating and fact gathering, including gathering through subpoenas; visiting worksites; collecting data; offering mediation; and partnering with community-based organizations.
- 3) Clarifies that while the Legislative intent in enacting FEHA was to occupy the field in terms of regulation of employment and housing discrimination, this intent shall not be construed to limit the ability of a local government entity to refer a person alleging discrimination to DFEH for information on the manner and necessity of filing a proper and timely complaint; to assist that person in doing so to the extent permitted by law; and to provide relevant information and resources.
- 4) Makes findings and declarations relating to the extent of workplace discrimination, the negative impact of high investigator caseloads within DFEH, and the corresponding need to enhance the ability of local governments to support DFEH anti-discrimination efforts and to consider, through the establishment of an advisory group, authorizing local enforcement of FEHA protections.

EXISTING LAW:

- 1) Declares, under the Unruh Civil Rights Act, that all persons within the jurisdiction of this state are free and equal and are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishments regardless of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status. (Civil Code Section 51.)
- 2) Provides that any person who discriminates in any manner that violates the Unruh Civil Rights Act, or other specified civil rights statute, is liable for each and every offense for up to three times the amount of actual damages, but in no case less than \$4,000 and reasonable attorney's fees. Permits a civil action for damages to be brought by the Attorney General, any district attorney or city attorney, or any person aggrieved by the discriminatory conduct. (Civil Code Section 52.)
- 3) Prohibits, under FEHA, discrimination in housing and employment. Authorizes DFEH to promulgate rules and regulations relating to housing and employment discrimination;

prescribes the manner for filing a complaint; and sets forth procedures by which DFEH shall investigate and remedy those complaints. (Government Code Section 12900 *et seq.*)

- 4) Specifies that, while it was the intent of the Legislature that FEHA should occupy the field of regulation relating to discrimination in employment and housing, nothing in FEHA's provisions shall be construed to limit the application of the Unruh Civil Rights Act or any other civil rights statute. (Government Code Section 12933.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: In 1959 the California Legislature enacted two important civil rights statutes. The Fair Employment Practices Act (which later became FEHA) prohibits discrimination in employment and housing. Although initially this statute primarily targeted racial and religious discrimination, it has been expanded over the years to ban discrimination on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. It was also in 1959 that the Legislature enacted the Unruh Civil Rights Act, which now prohibits any business establishment from denying to any person full and equal accommodations, advantages, facilities, privileges, or services based on that person's sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status. Additional statutes were added in subsequent years to prohibit, among other things, gender pricing discrimination, harassment or intimidation directed at protected classes of people, and human trafficking. Together, these statutes constitute California's principal civil rights and anti-discrimination statutes.

State and Local Enforcement of California's Civil Rights Laws: The agencies charged with enforcing California's civil rights and anti-discrimination statutes vary. The Unruh Civil Rights Act, for example, may be investigated and enforced by the California Attorney General, a district attorney, or a city attorney. In addition, any person injured by a violation of the Unruh Civil Rights Act may bring a civil action for damages, including any attorney's fees. However, the anti-discrimination provisions consolidated under FEHA are regulated and enforced by the Department of Fair Employment and Housing (DFEH). Specifically, DFEH is authorized to make rules and regulations relating to workplace and housing discrimination, as well as to receive complaints of discrimination, investigate those complaints, and take appropriate remedial action.

Most relevant to this bill, FEHA expressly states that it occupies the field of "regulation" (which is generally understood to include "enforcement") when it comes to employment and housing discrimination. While local officials – most notably public prosecutors – are expressly authorized to bring actions against discrimination under the Unruh Civil Rights and related civil rights statutes, they cannot regulate and enforce the provisions of FEHA – a comprehensive statutory framework that sets forth the procedures and timelines for filing complaints, providing notice, conducting hearings and investigations, encouraging mediation, and, if necessary, taking enforcement actions. Once a complaint is filed, DFEH must take a series of legally required steps. In many cases, DFEH investigates the case and encourages the parties to resolve the dispute. If the dispute cannot be resolved in this manner, DFEH may conduct hearings and, if it finds that discrimination has occurred, may take appropriate legal action. In other cases, DFEH may not take any action but provide the complainant a so-called "right to sue" letter, which

allows that person to bring a civil action without having to further exhaust any administrative process.

UCLA/Rand Study on DFEH Funding: In 2008 DFEH Director Phyllis Cheng commissioned a study in anticipation of the 50-year anniversary of FEHA (1959-2009), which eventually resulted in a 2010 UCLA/Rand report, entitled *California Employment Discrimination Law and its Enforcement: The Fair Employment and Housing Act at 50*. Among the many problems identified by the report was the "inadequate funding" that made it more difficult for DFEH to carry out its mission, and especially its capacity to investigate complaints. Three years later, a report prepared by the California Senate Office of Oversight and Outcomes also concluded that DFEH investigation and enforcement was hampered by a combination of "dwindling resources and increased demand." (California Senate Office of Oversight and Outcomes, *Department of Fair Employment and Housing: Underfunding and Misguided Policies Compromise Civil Rights Mission*, December 18, 2013.) Citing this reported lack of funding and the resulting increase in investigator caseloads, the author and sponsor maintain that allowing local government officials to enforce FEHA will provide additional tools and resources to combat an apparently increasing level of housing and workplace discrimination. The author and sponsors reasonably believe that allowing local officials to enforce FEHA will remove some of the burden from DFEH and ultimately provide more opportunities for justice to persons who suffer discrimination.

This bill: A prior version of this bill responded to the alleged inability of DFEH to handle its caseload by authorizing local government officials to enforce FEHA, in more or less the same manner that they now enforce the Unruh Civil Rights Act. However, because FEHA sets forth a comprehensive process, with specific procedures and timelines that have developed over years of practice, it was not immediately apparent that this framework could simply be transferred to local government entities. As such, the bill was substantially amended to require DFEH to establish an advisory group to study the feasibility of allowing local government entities to enforce FEHA. The advisory group would consist of at least one member of DFEH and representatives from employer, employee, and civil rights advocates. Among other things, the group would survey local governments about the kinds of activities that they currently undertake to address problems of housing and workplace discrimination. If the advisory group concludes that local enforcement of FEHA is advisable and feasible, it would be charged with drafting proposed legislation – in consultation with Legislative Counsel and the California Law Revision Commission – for submission to the Legislature.

In addition, this measure would also amend existing law to clarify that, while FEHA may occupy the field of regulation and enforcement, local governments are not entirely precluded from taking actions to assist and supplement the mission of DFEH. Specifically, this bill states that nothing in the grant of exclusive regulatory and enforcement authority to DFEH limits the ability of local government entities to refer a person alleging discrimination to DFEH for the purpose of filing a timely complaint, to assist that person in doing so, or to provide persons with educational information about their rights under the FEHA and how to exercise those rights.

A caveat: Until local officials have enforcement power, should they do anything beyond referring a person to DFEH? Many of the letters in support of this measure, as well as the bill's findings and declarations, suggest that local officials can and should engage in more "supportive workplace discrimination activities" than they currently do. However, beyond referring people to DFEH or providing general educational outreach, it is not entirely clear that we would *want* local officials to do anything more than make referrals given that they lack authority to investigate and enforce FEHA claims. Indeed, one could argue that, under existing law, the most

important thing that local officials can do for people who face workplace and housing discrimination is to refer them immediately to DFEH so that they can file a *timely* complaint. In other words, until local officials have the authority, workers might be ill-advised to approach local officials for assistance. Instead, persons facing workplace and housing discrimination should be encouraged to bypass local officials and contact DFEH directly and immediately so that they may file their complaint and take other necessary actions to initiate their case before the expiration of DFEH deadlines. If a local government entity wants to be more proactive, and take actions *before* a complaint is brought to its attention, then it could provide educational materials explaining the importance of contacting DFEH as soon as possible.

DFEH Caseloads and "Right to Sue" Letters: The author and supporters agree that DFEH lacks the resources to adequately investigate and effectively enforce all of the complaints that it receives and, therefore, granting enforcement power to local officials will result in the resolution of more claims. While it is true that DFEH does not investigate every complaint that it receives, let alone see all of them through to a resolution, this is not always the result of a lack of funding. DFEH has informed the Committee that many complaints that do not result in DFEH investigation and enforcement action do, nonetheless, result in the issuance of a so-called "right to sue" letter. FEHA generally prohibits individuals from bringing a civil action before those individuals have "exhausted" all of their administrative remedies. The "right to sue letter," which is sometimes issued very early in the process, even before any DFEH investigation or action occurs, is effectively proof that the person has exhausted administrative remedies and may now proceed with a civil action for damages. According to the 2010 UCLA/Rand Report cited above, depending upon a person's situation and the nature of the violation, a person might secure a more favorable outcome through a civil action than through a DFEH enforcement action. Any legislation proposed by the advisory group should consider what it will mean to exhaust administrative remedies with a local entity and ensure that persons seeking justice through local officials will similarly be eligible for "right to sue" letters.

ARGUMENTS IN SUPPORT: According to the author, "while well-intended, FEHA's provisions and protections are unable to keep pace with the high volume of claims filed with the Department of Fair Employment and Housing (DFEH)." The author writes that "DFEH receives an average of 24,000 discrimination claims every year and even the simplest claims require a minimum of 90 days to process and initiate action. Added to this, DFEH has seen its resources and funding dwindle since FEHA was passed, which has hampered its ability to investigate and resolve claims. This means that those who need FEHA protections enforced by DFEH are often left in limbo for prolonged periods of time, which adds to their dilemma." Given the limited ability of DFEH to respond to its heavy caseload, this measure "will call on the DFEH, along with civil rights, employer and employee advocates, to establish an advisory committee to examine ways to allow local governments to assist the groups covered under FEHA, while also easing DFEH's burden and lack of resources." The author hopes that the advisory group's findings "will help ensure that those people who suffer discrimination will have the backing of all levels of government in shielding them from such violations."

The Alliance for Boys and Men and Color writes that "SB 491 will begin the process of establishing a right of local enforcement of FEHA employment protections." The Alliance adds that "recent published research demonstrates that discrimination in hiring remains a persistent challenge for Black workers." In addition, the Alliance contends that "more than 40 percent of lesbian, gay, and bisexual workers report experiencing employment discrimination at some point in their lives, while approximately 90 percent of transgender workers . . . experience harassment, mistreatment, or discrimination at work or have tried to hide who they are to avoid these

experiences." The Alliance concludes that "lack of enforcement of anti-discrimination laws is a problem that is well documented and if ever there were a time to reverse that pattern, it is now."

AUTHOR'S TECHNICAL AMENDMENTS:

- On page 4, line 15, before "Statutory" insert: *Advising persons about*
- On page 4, line 29, change "Law Review Commission" to *California Law Revision Commission*

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles Black Workers Center (co-sponsor)
 SEIU (co-sponsor)
 African American Cultural Center
 Alliance of Boys and Men of Color
 Alliance for Boys and Men of Color, Riverside County
 Anti-Defamation League
 Black Community, Clergy, and Labor Alliance
 California Labor Federation
 Courage Campaign
 Fathers & Families of San Joaquin
 IDEPSCA
 Koreatown Immigrant Workers Alliance
 NAACP, California Conference
 National Employment Law Project
 PolicyLink
 Restaurant Opportunities Center of Los Angeles
 Shields for Families
 Strategic Concepts in Organizing and Policy Education
 United Food and Commercial Workers Union, Local 770
 Voices for Progress Education
 Warehouse Worker Resource Center
 Western Center on Law and Poverty
 Women's Foundation of California

Opposition

None on file

Analysis Prepared by: Thomas Clark / JUD. / (916) 319-2334

Date of Hearing: August 23, 2017

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez Fletcher, Chair

SB 491

(Bradford) – As Amended July 12, 2017

Policy Committee: Judiciary

Vote: 11 - 0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill requires the Department of Fair Employment and Housing (DFEH) to establish an advisory group, by April 1, 2018, to determine the feasibility of authorizing local government entities to enforce anti-discrimination statutes. In addition, this bill requires the advisory group to conduct a survey and produce a study relating to the types of activities that local entities currently engage in with respect to enforcing, educating, and implementing certain civil rights. This bill requires the advisory group to report to the Legislature by December 31, 2018, on the results of the advisory group and any recommendations resulting from the group's work.

FISCAL EFFECT:

Unknown GF costs to DFEH to establish the advisory group and conduct the study. Costs would depend on the scope and level of detail of the study that is determined by the advisory group. Given the requirements and timelines established in the bill, it is likely that costs would be in the tens of thousands of dollars.

COMMENTS:

- 1) **Background.** The agencies charged with enforcing California's civil rights and anti-discrimination statutes vary. The Unruh Civil Rights Act, for example, may be investigated and enforced by the California Attorney General, a district attorney, or a city attorney. In addition, any person injured by a violation of the Unruh Civil Rights Act may bring a civil action for damages, including any attorney's fees. However, the anti-discrimination provisions consolidated under the Fair Employment and Housing Act (FEHA) are regulated and enforced by the Department of Fair Employment and Housing (DFEH). Specifically, DFEH is authorized to make rules and regulations relating to workplace and housing discrimination, as well as to receive complaints of discrimination, investigate those complaints, and take appropriate remedial action.
- 2) **Purpose.** According to the author, "while well-intended, FEHA's provisions and protections are unable to keep pace with the high volume of claims filed with the Department of Fair Employment and Housing (DFEH)." The author writes that "DFEH receives an average of 24,000 discrimination claims every year and even the simplest claims require a minimum of 90 days to process and initiate action. Added to this, DFEH has seen its resources and funding dwindle since FEHA was passed, which has hampered its ability to investigate and

resolve claims. This means that those who need FEHA protections enforced by DFEH are often left in limbo for prolonged periods of time, which adds to their dilemma." Given the limited ability of DFEH to respond to its heavy caseload, this measure "will call on the DFEH, along with civil rights, employer and employee advocates, to establish an advisory committee to examine ways to allow local governments to assist the groups covered under FEHA, while also easing DFEH's burden and lack of resources." The author hopes that the advisory group's findings "will help ensure that those people who suffer discrimination will have the backing of all levels of government in shielding them from such violations."

Analysis Prepared by: Jessica Peters / APPR. / (916) 319-2081



LORI GLASGOW
EXECUTIVE OFFICER

COUNTY OF LOS ANGELES BOARD OF SUPERVISORS


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July 28, 2017

TO: Los Angeles County Citizen Advisory Commissioners, Executive Directors, and
Commission Liaisons

FROM: Lori Glasgow 
Executive Officer of the Board

SUBJECT: Los Angeles County Commission Manual, Annual Report and Sunset Review

On May 16, 2017, the Los Angeles County Board of Supervisors directed the Executive Office of the Board to develop a Commission Manual and to initiate a sunset review and annual report process for all Citizen Advisory Commissions.

Commission Manual and Annual Report

Attached is the Los Angeles County Commission Manual which will serve as a helpful guide to assist Commissioners in their role on the Commission. The Manual covers various topics, such as roles and responsibilities, conducting meetings, communicating with the Board, in addition to an appendix with useful information pertaining to your Commission. Also, to provide greater awareness of the Commission's work and future goals, Commissions are encouraged to submit an Annual Report to the Board of Supervisors with a copy to the Executive Office's Commission Services Division. A sample report template of information for inclusion in the annual report is included in the Manual. You may also visit the Executive Office Website to review the manual.

Sunset Review

In order to provide Commissions an opportunity to share information and periodically review and evaluate their activities, the Board directed Citizen Advisory Commissions and select Commissions to participate in a sunset review process every four years. This process includes the completion of a sunset review evaluation questionnaire that will also allow Commissions to showcase their community engagement and interaction with stakeholders.

If you have any questions or would like to discuss further, please contact Twila Kerr of my staff at (213) 974-1431. Thank you.

LG:tpk

Attachment

c: Chief Deputies/Chiefs of Staff, Board of Supervisors
Chief Executive Officer
County Counsel



LOS ANGELES COUNTY COMMISSION MANUAL

This manual provides a guide to Los Angeles County processes, legal parameters, and protocols that affect the business of County Commissions. In addition, the manual details information on the role and duties of Commissioners when conducting meetings, developing agendas, advocating on legislative issues, and provides information on resources available while representing the County Board of Supervisors.

Executive Office, Board of Supervisors

Commserv@bos.lacounty.gov

(213) 974-1431

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Disclaimer: This manual contains general information, county policies and practices to be used as a commissioner guide. Contents within the guidelines are subject to change anytime without notice.

PREFACE

Welcome to the County of Los Angeles. We thank you for your dedication to public service in facilitating the important work of the County of Los Angeles through County Boards, Commissions, Committees, Oversight Boards, Task Forces, Working Groups, and Special District Agency Boards (collectively referred to as Commissions). This manual will outline your responsibilities and obligations as a Commissioner, on how to communicate your recommendations and findings to the Board of Supervisors (Board), and on other practical information in the conduct of your service.

Please take time to read through this manual to understand how business is handled by the various Commissions and the Board. You are expected to attend meetings regularly and to conduct the business of the Commission in a transparent, efficient, and professional manner. As you advocate for the community you represent, please remember your expertise is a valued, important, and essential factor in assisting the Board to reach their goals and strategic priorities for the County and the communities they serve.

I. ROLE OF COMMISSIONS IN COUNTY GOVERNMENT

Commissions serve a vital role in county government by gathering and analyzing public input and recommending options to the Board. The guiding principle of any Commission recommendation to the Board is that of addressing the overall public benefit. Some Commissions are authorized by the Board to take independent action (e.g., Regional Planning Commission, Civil Service Commission, Business License Commission, etc.); others serve in a fact-finding or advisory role and are not authorized to take action. These Commissions are advisory to the Board; therefore, may not take an official position for the County which has not been approved by the Board. (See also Section VI. Legislation and Public Officials)

A. Establishment of Commissions

Commissions were established to assist the Board with the varied duties and responsibilities of local government, and encourage citizen involvement, expertise and participation.

Commissions may be created by:

- State or Federal Law
- County Ordinance or Charter
- Action by the Board of Supervisors

Commissions are organized into seven categorical roles:

1. **Citizen Advisory Commissions** are local, state or federally mandated bodies whose primary role is to provide feedback and recommendations to the Board and/or County Departments on proposed or existing policies, procedures, programs and services.
2. **Administrative Board and Committees** are bodies tasked with providing essential administrative functions on behalf of or in conjunction with government entities.

3. **Authorities of the County** are decision making bodies that approve funding for specific County projects, equipment and facilities.
4. **Interagency Coordination Committees** are entities that are concerned with inter-organizational coordination of policies, regulations, services and programs to better serve the needs of residents in specific subject areas.
5. **Joint Power Authorities and other agencies** are comprised of a group of bodies that are primarily concerned with the direct delivery and management of government services, programs, and public infrastructure.
6. **Special Districts** are independent government entities that provide specialized functions for clearly defined geographic areas.
7. **Ad-Hoc Committees and Task Forces** are temporary, special purpose committees that are created by the Board and/or other government entities to address pressing County matters.

II. COMMISSIONER RESPONSIBILITIES

A. Role and Responsibilities of a Commissioner

- Commissioners are encouraged to take an active role in helping the Commission fulfill its goals and objectives.
- Commissioners are responsible for attending meetings regularly to ensure a quorum, and to facilitate the business and meet the goals of the Commission.
- It is the responsibility of Commissioners to provide advance notice to the Chairperson, Executive Director, Commission Liaison, or Commission Staff, if they cannot attend a meeting.
- Commissioners are also responsible for reviewing meeting materials in advance of a meeting, and complying with the Ralph M. Brown Act (Brown Act) as set forth in state and local laws regarding public meetings.
- Commissioners should also have knowledge of the County's Strategic goals and the vision and priorities of the Board. (See Appendix Section XII C. [2016 -2021 County Strategic Plan and County Strategic Priorities](#))

B. Public Statements by Commissioners to Media and Other Organizations

Prior to responding in your capacity as a Commissioner to any inquiry from television, magazines, newspapers, or any other media outlets, the request should be discussed with the Executive Director, Commission Liaison, or Commission Staff to ensure Departmental policy and protocols are followed to respond to media inquiries.

When speaking to the media, Commissioners should not imply they are speaking on behalf of the Commission without prior approval from the body. Commissioners affiliated with non-county organizations should proactively clarify with reporters that they do not speak on behalf of the Commission and are only commenting as an individual affiliated with an outside organization. Commissioners comments (verbal or written) as a private citizen solely reflect your personal position and not as a representative of the Commission.

C. New Commissioner Orientation

All newly-appointed Commissioners are encouraged to attend an orientation session coordinated by the Executive Office of the Board relating to the County's Governance, legislative process and the Brown Act.

D. State Mandated Ethics and Other Trainings

[California Government Code sections 53235 and 53235.1](#) require that any newly appointed local agency official and certain Commissioners receive two hours of training in local government ethics within one year of assuming the position and once every two years thereafter. The Executive Director, Commission Liaison, or Commission Staff will notify you if your Commission is required to complete this training.

Citizen Advisory Commissioners are also required to complete the Cultural Diversity Awareness and Sexual Harassment and Prevention Training and the County Policy of Equity Training. The Executive Director, Commission Liaison, or Commission Staff will notify you of your scheduled trainings.

E. Conflicts of Interest and Statement of Economic Interests (Form 700)

Commission members must keep their personal interests separate from their Commission duties and responsibilities, and avoid conflicts of interest. A conflict of interest occurs if Commission members allow their personal relationships, money (or the promise of money), or other outside factors to influence how they perform their Commission duties and responsibilities. A conflict of interest also exists if Commission members use information acquired in their capacity as Commission members for personal gain.

To avoid potential conflicts or the appearance of any conflicts, Commission members may not participate in discussions, deliberations, or recommendations regarding issues in which they have a personal or financial interest. In addition, they may not accept gifts from lobbyists or anyone doing business with the County or who may come before the Commission. This is against County policy and may be illegal.

Some Commissioners are required to complete and sign conflict of interest documentation (Statement of Economic Interests - Form 700) prior to commencing their Commission duties. Not all Commissioners are required to file a Form 700, because the filing requirement is based upon the authority and responsibilities of the Commission. If you have questions about whether or not you need to file, please contact your Executive Director, Commission Liaison, or Commission Staff.

F. Service at the Will of the Board of Supervisors

Generally, Commissioners serve at the pleasure of the Board and can be removed at any time.

G. Process for Resigning from a Commission

Letters or email of resignation can be submitted to their appointing authority and Board Office. Copies of the resignation should also be provided to the Chairperson, Executive Director, Commission Liaison, or Commission Staff.

H. Process for Filling Vacancies

It is the policy of the Board of Supervisors to give public notice of vacancies on Commissions and actively recruit qualified candidates. Vacancy information along with the Commission qualifications found on Commission's Fact Sheet is available on the Commission Services Membership Roster webpage at <http://bos.lacounty.gov/Services/Commission-Services/Membership-Roster>. Commissions are encouraged to forward letters of interest along with a biography, to the Board.

III. COMMISSION OFFICERS

A. Chairperson's/President's Duties

The duties of the Chairperson/President or Co-Chair if applicable, generally shall include, unless otherwise established by the bylaws, operating rules and/or ordinance of the Commission:

- Working with the Executive Director, Commission Liaison, or Commission Staff to prepare the meeting agenda to comply with Brown Act standards and timeframes.
- Presiding over all meetings by:
 - Calling the meeting to order at the scheduled time.
 - Verifying the presence of a quorum.
 - "Processing" all motions including (stating the motion prior to discussion, restating the motion just prior to the vote, and announcing the result of the vote, specifying who voted in favor, who voted against, and any abstentions and recusals).
 - Facilitating meetings by staying on track and adhering to time constraints.
 - Conducting the meeting in a fair and equitable manner.
 - Restraining the members when engaged in debate, within the rules of order to enforce the observance of order and decorum among the members.
 - Maintaining neutrality to facilitate debate.
 - Ensuring the work of the Commission is consistent with its intended purpose and mission.
- Be familiar with and conduct the meetings according to the Robert's Rules of Order, and/or bylaws and ordinance. (See Appendix Section XII E. County of Los Angeles Procedural Rules for County Commissions and Committees Based on [Robert's Rules of Order \(Abridged\)](#) and in Compliance with the Brown Act)
- For issues related to business processes, contact the Executive Director, Commission Liaison, or Commission Staff.

B. Vice Chairperson's/President's Duties-if applicable

The Vice Chairperson's/Vice President's duties shall generally include, unless otherwise established by the bylaws, operating rules and/or ordinance of the Commission:

- Assuming the role of the Chairperson/President, in the absence of the Chairperson/President.
- Working in collaboration with the Chairperson/President.

C. Election of Commission Officers

As indicated in the Commission's bylaws, Ordinance, or Board Directive, each body should organize the election of its Officers (Chairperson, Vice Chairperson, Treasurer, etc.). The Commission's bylaws or operating rules should contain the duties of its elected officers.

IV. ROLE OF THE DEPARTMENTS, EXECUTIVE DIRECTORS, COMMISSION LIAISONS, AND COMMISSION STAFF

A. Executive Directors, Commission Liaisons, Commission Staff

Administrative support provided by the assigned Executive Director, Commission Liaison, or Commission Staff who is responsible for providing leadership to the Commissions and assisting the Commissions with annual goals and objectives that align with the Board and/or Department priorities. The Executive Director, Commission Liaison, or Commission Staff serve as the point of contact for your Commission. Commissions are generally administratively assigned to County Departments as mandated by legislation, ordinance or Board order.

B. Relationship with Departments

County Departments may be a resource for Commissions to answer questions, provide data on the impact of issues being considered, clarify County policy, and generally keep Commissions current on issues related to the County's budget, legislation endorsed by the County, and information on available services.

V. COMMUNICATING WITH THE BOARD OF SUPERVISORS

The Board is always interested in facilitating the work of Commissions and welcomes any suggestions. Board members value information that alerts them to upcoming issues and concerns allowing them to respond proactively.

Commissions have various avenues of communicating and reporting their collective recommendations and findings to the Board, including an annual report to the Board of its activities and accomplishments. Another avenue for communication with the Board is through Commission approved correspondence. Commission approved letters/memos can be submitted to the Board to relay information or to obtain guidance on matters of Commission concern.

A. Recommendations to the Board of Supervisors

Recommendations approved by the Commission as a whole can be submitted to the Board via memos or written correspondence for consideration. It is recommended that you consult with your Executive Director, Commission Liaison or Commission Staff regarding correspondence guidelines and protocols for your respective departments when submitting memos or written correspondence on behalf of the Commission.

B. Consulting and Engaging with Board Offices

Commissioners may communicate with their District's assigned Board offices. However, protocol suggests that Commissioners work within the framework of the Commission and the Chairperson when information needs to be conveyed to or obtained from the Board as a whole, or to an individual Supervisor.

C. Commission Annual Reports

Each Commission should provide an update to the Board about its activities through an Annual Report. The Annual Report is to be completed by each Commission and approved at a regular Commission meeting. The Executive Director, Commission Liaison, or Commission Staff will transmit the Annual Reports to the Board. (See Appendix Section XII A. Annual Report Template and Instructions)

It is the Commission's responsibility to write its Annual Report. Some Commissions assign this task to a committee or a particular Commissioner, who will prepare a draft for Commission review. Once the content is approved by the Commission, the Executive Director, Commission Liaison, or Commission Staff can prepare the final documents and forward to the Board.

D. Sunset Review Evaluation

Every four years, a Sunset Review is conducted for each Citizen Advisory Commission, and others as designated as indicated on the Commission's Fact Sheet that can be accessed on the Commission Services Membership Roster webpage at <http://bos.lacounty.gov/Services/Commission-Services/Membership-Roster>. The Sunset Review will provide an opportunity for Commissions and stakeholders to evaluate their work and accomplishments, as well as allows Commissions to periodically review their ordinance and scope of work. The Sunset Review analysis is forwarded to the Audit Committee for assessment and recommendations to the Board for extension to the sunset review date and any changes to the Commissions' ordinances. (See Appendix Section XII B. Sunset Review Evaluation Questionnaire and Instructions)

VI. LEGISLATION AND PUBLIC OFFICIALS

A. How to Obtain Information on the Board of Supervisors Legislative Positions

Each year, the County's State and Federal Legislative Agendas are developed based on the political and economic climates in Sacramento and Washington, D.C. Through the County's Legislative Program, the Board adopts legislative goals and policies, enabling the County's advocates in Sacramento and Washington D.C., to effectively respond to legislative proposals that could significantly impact the County's finances or programs. The Legislative Agenda includes general principles and positions, as well as policy statements regarding issues of major County interest. These documents are updated annually, after consultation with County departments, the Board offices, the County's legislative representatives, and commissions and advisory boards. The Legislative Agendas are presented to the Board for consideration in December or January and once approved, provide a framework for ongoing advocacy throughout the year.

You can request a copy of the County's State and Legislative Agenda via the Executive Director, Commission Liaison, or Commission Staff, if applicable. Also, for additional information and status updates of bills for which the County has taken a position on, you may also review the State and Federal Legislation of County Interest report available through the Chief Executive Office (CEO) Legislative Affairs and Intergovernmental Relations office or website at http://ceo.lacounty.gov/igr/leg_info.htm. For information on State legislation information, visit <http://leginfo.legislature.ca.gov/>.

B. Recommending a position of Commission Interest to the Board of Supervisors

Commissions may not take an official position for the County which has not been approved by the Board. County Commissions and other advisory bodies seeking a position on legislation or State Budget items are required to submit their recommendations to the CEO for review to determine if they are consistent with existing policy prior to taking an advocacy position. Upon completion of the review, the CEO will provide a copy of the review findings to be attached to the document containing the Commission's recommendations transmitted to the Board.

C. Engaging with other Jurisdictions and Elected Officials

Commissions can work with the Executive Director, Commission Liaison, or Commission Staff when engaging other jurisdictions, such as other counties, cities and elected officials in the work of the Commission when needed. Commissions should notify Board Offices before inviting or if they are informed that a state, or federal, or other local elected official will attend a Commission meeting, event or County facility.

VII. TYPES OF MEETINGS

A. Regular Meetings

Commissions hold regular meetings to conduct business, such as receiving and filing reports, discuss and take action on recommendations and vote to forward recommendations to the Board or other entities as deemed appropriate. The agenda for a regular meeting must be posted 72 hours in advance of the meeting in accordance with the Brown Act. The Executive Director, Commission Liaison, or Commission Staff attending the meetings assist the Commission Chair.

B. Special Meetings

The Chairperson/President or a majority of the appointed Commissioners may call a special meeting if deemed necessary and will coordinate with the Executive Director, Commission Liaison, or Commission Staff regarding availability of staff and a meeting room. The agenda of a special meeting must be posted 24 hours in advance of the meeting in accordance with the Brown Act and distributed to interested parties that have requested notification.

C. Planning Meetings

Commissions may work in coordination with the Executive Director, Commission Liaison, or Commission Staff to schedule to meet in planning sessions to develop their annual goals, review bylaws, and focus on Commission issues. These meetings are subject to the Brown Act and will be properly noticed, agendized, open to the public and require a quorum of members in attendance to conduct business.

VIII. COMMISSION MEETINGS

A. Process for Developing the Meeting Agenda

The Chairperson/President works with the Executive Director, Commission Liaison, or Commission Staff to coordinate the meeting agenda; however, the method by which the agenda is developed varies according to the procedures of the individual Commissions. A Commissioner may request that an item be placed on the agenda by submitting a request to the Chairperson. The Executive Director, Commission Liaison, or Commission Staff, in collaboration with the Chairperson, will ensure that the agenda follows standard formatting and language guidelines and Brown Act requirements.

B. Ralph M. Brown Act (Brown Act)

Commission meetings are subject to the Brown Act, which guarantees the public's right to attend and participate in Commission meetings. Agendas must be physically posted at the meeting site and accessible to the public. It is also highly encouraged for Commissions with websites to post current agendas and minutes online for public view. The agenda must include all items which will be discussed or acted upon by the Commission. Generally, the Commission cannot discuss, deliberate, or take action on any item not included on the agenda. Commissions must allow a member of the public to address the Commission on any agenda item before or during consideration of that item. Members of the public are also given the opportunity to address the Commission on any matter not on the agenda which is within the subject matter jurisdiction of the Commission. (See Appendix Section XII E. County Counsel Guide to the Brown Act)

C. Quorum Determination

A quorum is the minimum number of members who are required to be present at the meeting in order to conduct business. Generally, a quorum is a majority of the members of the body, unless otherwise established. Statute or bylaws may specify a higher (but not a lower) number.

D. Attendance Reports to the Board of Supervisors

Attendance information is maintained by the Executive Office of the Board, Commission Services Division and is provided to the Board quarterly for their review.

IX. COMMITTEES

A Commission may choose to create standing and/or ad-hoc committees that report to the full Commission to assist with Commission business and priorities.

A. Standing Committees

Standing committees have a continuing subject matter and have a meeting schedule fixed by formal action. Standing committees may not include a quorum of the entire Commission membership. All standing

committees are subject to the Brown Act and must be properly noticed, agendized, and open to the public, and have a quorum of the committee membership present to meet.

B. Ad-hoc Committees

Ad-hoc committees are established by the Commission for a limited purpose and time. The Chairperson/President can appoint Commissioners to serve on ad-hoc committees or an ad-hoc committee can be established by Commission vote. An ad-hoc committee may not include a quorum of the entire Commission membership.

X. CONDUCTING MEETINGS

A. Business Conducted at Commission Meetings

The application of Parliamentary Procedure is the best method to enable Commissions to determine the will of the Commission. The Procedures help create a balance between the rights of persons in the minority on specific issues to be heard with the rights of persons holding the majority position to prevail. All meetings should be conducted in accordance with Robert's Rules of Order to aid in conducting meetings in a fair and equitable manner. (See Appendix Section XII E. County of Los Angeles Procedural Rules for County Commissions and Committees Based on [Robert's Rules of Order \(Abridged\)](#) and in Compliance with the Brown Act)

The meetings are called to order by the Chairperson/President or Vice Chairperson/President in the absence of the Chairperson/President. If neither is in attendance, the Commission selects a Chairperson Pro Tempore to conduct the meeting.

B. Public Comment

Pursuant to the Brown Act, before or during consideration of each agenda item, the public must be given an opportunity to comment on the item, and have a right to comment on any agenda item or items that are within the jurisdiction of the Commission. The Chairperson/President establishes the amount of time public speakers are authorized to speak on each item. Generally, speakers fill out Request to Speak Forms, which will be provided to the Chairperson to call on speakers. A member of the public is not required to identify themselves, but must provide identifiable information allowing the Commission the reasonably call upon them to address the body. Also, a member of the public may record (audio/video) the meeting including their testimony before the Commission.

C. Distribution of Materials and Meeting Accommodations

The Brown Act states that documents being distributed by the Commission during meetings must be made available for review by the public. This applies to documents distributed prior to the meeting. Any material that is not prepared by the County or a Commissioner and is distributed during an open meeting must be made available for public inspection as soon as possible after the meeting. For example, if a member of the public submits a document to accompany his/her public comment statement, Commission staff retain the document as part of the meeting records, provide a copy of the document to the Commissioners following the meeting, and have it available upon request following the meeting.

XI. MISCELLANEOUS

A. Travel Expense Reimbursement

Commissioners can consult with their Executive Director, Commission Liaison or Commission Staff to determine whether they are authorized by County Code to travel on Commission related business (other than commission meetings) and are eligible for reimbursement of expenses incurred while conducting Commission business. Commissioners authorized to travel must make all air travel reservations through as mandated by the Board (See [County Code Section 5.40](#) and [Fiscal Guidelines Chapter 13](#)).

B. Mileage Reimbursement

Commissioners can consult with their Executive Director, Commission Liaison or Commission Staff to determine whether they are eligible pursuant to County Code to receive mileage reimbursement for Commission business. A Commissioner who uses their private vehicles for travel on County Business, if eligible, may become certified as a Mileage Permittee for reimbursement of mileage at the current established rate. Mileage claim forms are provided by the Executive Director, Commission Liaison, or Commission Staff. Claims for mileage reimbursement are required be submitted within 30 days of County business conducted.

C. County Issued Materials

If applicable, County Commission Business cards may only contain information concerning the Commission, not personal business information. Commissioners may not use County-issued materials such as business cards and letterhead for personal correspondence purposes. If a "Commissioner" title is used for information purposes, you must include a disclaimer that you do not speak on behalf of the County of Los Angeles or the Commission for which you are a member.

D. Commissioner Parking

The Executive Director, Commission Liaison or Commission Staff will inform commissioners of available parking for commission meetings.

E. Commission Publications

Commissions may develop or produce informational and educational materials for distribution in hard copy or for inclusion on the Commission's website relating to their roles, responsibilities and meeting information. Material and information shall be in compliance with enabling legislation, federal and state laws, County Codes and Board policies.

F. Commission Webpages

Available Commission Websites are linked on the Executive Office Membership Roster website <http://bos.lacounty.gov/Services/Commission-Services/Membership-Roster> as the central location to obtain commissioners rosters, fact sheets and websites. To ensure that the County's commissions

website are consistent with information that various stakeholders have indicated they would like to access, it is recommended that at least the following information be included:

- A current agenda and past minutes
- An annual regular meeting schedule
- A description of the commission and its mission with creating authority (link to ordinance, board order, state or federal mandate establishing the body)
- Commission's annual report (if applicable)
- Commission members and officers

XII. APPENDIX

A. Annual Report Template and Instructions

A Template and Instructions on completing and submitting the Annual Report is attached

B. Sunset Review Evaluation Questionnaire and Instructions

A Template and Instructions on completing and submitting the completed questionnaire is attached.

C. County Strategic Plan and Major Priorities

A copy of the [County Los Angeles Strategic Plan](#) is attached; Los Angeles County Board of Supervisors Major Priorities can also be accessed at <http://priorities.lacounty.gov>.

D. Commission Bylaws, Ordinances, and/or Board Directives

See your Executive Director, Commission Liaison, or Commission Staff for additional information specific to your Commission.

E. Parliamentary Procedures

The following are attached:

- County of Los Angeles Procedural Rules for County Commissions and Committees Based on [Robert's Rules of Order \(Abridged\)](#) and in Compliance with the Brown Act
- [County Counsel Guide to Brown Act Requirements](#)

ANNUAL REPORT TEMPLATE

Each Commission is required to provide an update to the Board of Supervisors about its activities through an Annual Report. The Annual Report for Commissions is to be completed either each Fiscal Year or each Calendar Year as determined by the Commission. The following template includes suggested sections, but is meant to be used as a guide and does not preclude a Commission from including additional information.

Part I. Cover Sheet

- Include the name of the Commission and the timeframe covered in the Annual Report
- Include the Commission's physical and website addresses, telephone and fax numbers
- Include members' names and their titles, and the name of the Executive Officer

Part II. Mission Statement

- State the mission of the Commission and any motto or vision/values, if applicable; and how mission, vision and values align with and support the County's Mission and Strategic Priorities
- List any roles and responsibilities of the Commission; this information can be extracted from the Commission ordinance, bylaws or fact sheet

Part III. Historical Background

- Provide historical information about the Commission such as when it was formed and the purpose for its formation
- Include issues of focus in past years, not including most recent past year to be discussed in Prior Year's Accomplishments
- Include significant outcomes of work by the Commission

Part IV. Annual Work Plan

- Provide goals or objectives for the upcoming year; and indicate how goals and objectives support the County's mission, vision and strategic priorities
- Include a work plan to accomplish the goals
- Include a timeline for completion of each goal

Part V. Prior Year Accomplishments

- Include accomplishments for the last year and status of each accomplishment
- Include a completion date or expected completion date

Part VI. Ongoing Long-Term Projects

- Provide any ongoing or long-term projects that the Commission is continuing to work on

September 6th, 2017

TO: Robin Toma, Assistant Director
Human Relations Branch

FROM: Vera Castillo, Legislative Analyst

RE: SB 21 (Bradford) – Law Enforcement Agencies: Surveillance: Policies

BILL SUMMARY

This bill would, beginning July 1, 2018, require each law enforcement agency, as defined, to submit to its governing body at a regularly scheduled hearing open to the public, a proposed Surveillance Use Policy for the use of each type of surveillance technology and the information collected, as specified. The bill would require the law enforcement agency to cease using the surveillance technology within 30 days if the proposed plan is not adopted. The bill would require the law enforcement agency to submit an amendment to the surveillance plan, pursuant to the same open meeting requirements, for each new type of surveillance technology sought to be used. The bill would require the policy and any amendments to be posted on the agency's Internet Web site. The bill would also require the agency to make specified reports, at approved intervals, concerning the use of surveillance technology, and to make those reports available on the agency's Internet Web site. The bill would prohibit a law enforcement agency from selling, sharing, or transferring information gathered by surveillance technology, except to another law enforcement agency, as permitted by law and the terms of the Surveillance Use Policy. The bill would provide that any person could bring an action for injunctive relief to prevent a violation of these provisions and, if successful, could recover reasonable attorney's fees and costs. The bill would require an agency to discipline an employee who knowingly or intentionally uses surveillance technology in violation of these provisions, as specified. The bill would authorize an agency to temporarily use surveillance technology during exigent circumstances, as specified, without meeting the requirements of these provisions, provided that, among other things, the agency submits a specified report to its governing body within 45 days of the end of the exigent circumstances, except as specified.

The bill would establish separate procedures for a sheriff's department or a district attorney to establish their own Surveillance Use Policies, instead of submitting them through their governing body. The procedures would include holding a noticed public hearing on the proposed policy, posting the policy on the department's Internet Web site, amending the policy to include new types of surveillance technology, and publishing a biennial report regarding the department's use of surveillance technology, as specified.

The bill would also establish procedures for the Department of the California Highway Patrol and the Department of Justice to establish their own Surveillance Use Policies. The bill would, among other things, require that these agencies ensure that the collection, use, maintenance, sharing, and dissemination of information or data collected with surveillance technology is consistent with respect for individual privacy and civil liberties, and that the policy be publicly available on the agency's Internet Web site. The bill would also require that if these agencies

intend to acquire surveillance technology, they provide 90 days advance notice on the agency's Internet Web site, as specified.

CURRENT STATUS

Held in the Assembly Appropriations Committee.

Date of Vote	Location	Ayes	Noes	Not Voting	Absent
3/21/2017	Senate Public Safety Committee	4	2	1	0
4/25/2017	Senate Judiciary Committee	5	2	0	0
5/25/2017	Senate Appropriations Committee	5	2	0	0
5/31/2017	Senate Floor	21	15	4	0
6/27/2017	Assembly Public Safety Committee	4	2	1	0
7/11/2017	Assembly Privacy and Consumer Protection Committee	6	3	1	0

NEXT CRITICAL STEP

The bill is now considered a 'two year' bill. However, there is a deadline in January (towards the end of the month) when each house has to pass bills introduced in that house in 2017.

REGISTERED SUPPORT/OPPOSITION

Support

Asian Law Alliance
California Civil Liberties Advocacy
California Attorneys for Criminal Justice
California Public Defenders Association
Conference of California Bar Associations
Council on American-Islamic Relations, California
Electronic Frontier Foundation
Firearms Policy Coalition
San Jose Peace & Justice Center

Opposition

Association for Los Angeles Deputy Sheriffs
Association of Deputy District Attorneys
Association of Orange County Deputy Sheriffs
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California District Attorneys Association
California Narcotic Officers Association
California Police Chiefs Association
California State Sheriffs' Association
California Statewide Law Enforcement Association
Fraternal Order of Police
League of California Cities
Long Beach Police Officers Association
Los Angeles County Probation Officers Union, AFSCME local 685
Los Angeles County Professional Peace Officers Association
Los Angeles County Sheriff's Department

Los Angeles Police Protective League
Peace Officers Research Association of California
Riverside Sheriffs' Association
Sacramento County Deputy Sheriffs' Association
Sheriff of San Bernardino, John McMahon

Date of Hearing: June 27, 2017
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 21

(Hill) – As Amended May 26, 2017

SUMMARY: Requires local law enforcement agencies to have a policy, approved by the local governing body, in place before using surveillance technology, as defined. Specifically, **this bill:**

- 1) Provides that on or before July 1, 2018, a law enforcement agency that uses or accesses information from surveillance technology, shall submit to its governing body a Surveillance Use Policy to ensure that the collection, use, maintenance, sharing, and dissemination of information or data collected with surveillance technology is consistent with respect for individuals' privacy and civil liberty.
- 2) Provides that the Surveillance Use Policy shall be in writing and made publicly available on the agency's Internet Web site prior to the public hearing and after adoption.
- 3) Provides that the governing body shall consider the policy for adoption by resolution or ordinance on the regular, nonconsent calendar at a regularly scheduled hearing.
- 4) Provides that on or before July 1, 2018, the Department of Justice (DOJ) and the Department of California Highway Patrol (CHP) shall hold a properly noticed public hearing and provide an opportunity for public comment before adopting a Surveillance Use Policy which shall ensure that the collection, use, maintenance, sharing and dissemination of information or data collected with surveillance technology is consistent with respect for individuals privacy and civil liberties. The policy shall be in writing and available on the agency's Internet Web site.
- 5) Provides that the policy shall pertain to any surveillance technologies already in use by the law enforcement agency and shall include, in separate sections specific to each unique type of surveillance technology, a description of each surveillance technology used by the law enforcement agency.
- 6) Specifies what each section of the policy covering a separate technology shall include.
- 7) Provides that after July 1, 2018, if a law enforcement agency intends to acquire a new type of surveillance technology after the adoption of the policy the agency shall submit an amendment to the policy to include the new type of technology as a new section of the policy and submit the amendment to its governing body for approval as provided.

- 8) Requires the amendment to be submitted prior to the acquisition of the technology and be submitted to the governing body at a properly noticed hearing and be in writing and publicly available on the agency's Internet Web site prior to the public hearing and after adoption.
- 9) Provides that if the DOJ or CHP intends to acquire a new type of surveillance technology after the adoption of the policy, they shall hold a notice public hearing and provide an opportunity for public comment before adopting the amends.
- 10) Provides that if before July 1, 2018, a law enforcement agency has implemented the requirements for automated license plate readers as provided for in law or cellular communications interception technology as provided for in law, the law enforcement agency shall include the required information as part of the Surveillance Use Policy.
- 11) Provides that at a time interval agreed to by the law enforcement agency and the governing body, a law enforcement agency shall submit a report on its surveillance use of approved technologies to the governing body and that report shall be made available on the agency's Internet Web site.
- 12) Specifies the minimum information to be included in the report.
- 13) Provides that a law enforcement agency may temporarily acquire or temporarily use a surveillance technology in exigent circumstances unless that acquisition or use conflicts with or is preempted by state or federal law and if the specified requirements are followed.
- 14) Provides that nothing in this bill shall be construed to prohibit a governing body from adopting additional protocols as they relate to surveillance technology.
- 15) Allows a civil action to be brought by an individual harmed by a violation of the Surveillance Use Policy against a person who knowingly caused a violation of a surveillance policy.
- 16) Includes the following definitions for purposes of this bill:
 - a) "Exigent circumstances" means "a law enforcement agency's good faith belief that an emergency involving danger of death or serious physical injury to any person requires use of a surveillance technology or information it provides;"
 - b) "Governing body" means "the elected or appointed body that oversees the law enforcement agency or the law enforcement agency's corresponding geographic area in the case of a county sheriff;"
 - c) "Law enforcement agency" means "any police department, sheriff's department, district attorney, county probation department, transit agency police department, school district police department, the police department of any campus of the University of California, the California State University, or community college, the CHP and the DOJ;" and
 - d) "Surveillance technology" means "any electronic device or system primarily intended to monitor and collect audio, visual, locational, thermal, or similar information on any individual or group. This includes, but is not limited to, drones with cameras or monitoring capabilities, automated license plate readers, closed-circuit cameras/televisions, international mobile subscriber identity trackers, global positioning

system technology, radio-frequency identification technology, biometrics-identification technology, and facial-recognition technology.”

- 17) Specifies that “Surveillance technology” does not include standard public agency computers and software, fingerprint scanners, ignition interlock devices, cellular telephones, two-way radios, or other similar electronic devices.

EXISTING LAW:

- 1) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized. (Cal. Const., art. 1, sec. 13.)
- 2) States that a search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate. (Pen. Code, § 1523.)
- 3) Prohibits wiretapping or eavesdropping on confidential communications. (Pen. Code, § 630.)
- 4) Makes it a crime for a person, intentionally, and without requisite consent, to eavesdrop on a confidential communication by means of any electronic amplifying or recording device. (Pen. Code, § 632.)
- 5) Allows eavesdropping or wiretapping by specified law enforcement officers or their assistants or deputies acting within the scope of his or her authority, when recording any communication that they could lawfully overhear or record. (Pen. Code, § 633.)
- 6) California Public Records Act generally provides that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state. (Gov. Code, § 6250 et. seq.)
- 7) Provides that public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law. (Gov. Code, § 6253.)
- 8) Makes a person liable for “physical invasion of privacy” for knowingly entering onto the land of another person or otherwise committing a trespass in order to physically invade the privacy of another person with the intent to capture any type of visual image, sound recording, or other physical impression of that person engaging in a personal or familial activity, and the physical invasion occurs in a manner that is offensive to a reasonable person. (Civ. Code, § 1708.8, subd. (a).)
- 9) Makes a person liable for “constructive invasion of privacy” for attempting to capture, in a manner highly offensive to a reasonable person, any type of visual image, sound recording,

or other physical impression of another person engaging in a personal or familial activity under circumstances in which the plaintiff had a reasonable expectation of privacy, through the use of a visual or auditory enhancing device, regardless of whether there was a physical trespass, if the image or recording could not have been achieved without a trespass unless the visual or auditory enhancing device was used. (Civ. Code, § 1708.8, subd. (b).)

- 10) Provides that a person who commits an invasion of privacy for a commercial purpose shall, in addition to any other damages or remedies provided, be subject to disgorgement to the plaintiff of any proceeds or other consideration obtained as a result of the violation of this section. Existing law defines “commercial purpose” to mean any act done with the expectation of sale, financial gain, or other consideration. (Civil Code § 1708.8 (d), (k).)
- 11) Requires that a public agency that operates or intends to operate an Automatic License Plate Recognition (ALPR) system to provide an opportunity for public comment at a public meeting of the agency's governing body before implementing the program. (Civil Code, § 1798.90.55.)
- 12) Prohibits a local agency from acquiring cellular communications interception technology unless approved by its legislative body. (Gov. Code, § 53166, subd. (c)(1).)
- 13) States that the board of supervisors shall not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county. (Gov. Code, § 25303.)
- 14) Clarifies that the statement above, shall not be construed to limit the budgetary authority of the board of supervisors over the district attorney or sheriff. (Gov. Code, § 25303.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "SB 21 expands the transparency requirements established for automatic license plate readers and cell-phone tracking devices established in 2015 to all surveillance technologies used by law enforcement agencies. This means surveillance technology will subject to public disclosure and local legislative review. Surveillance technologies must be governed by a Surveillance Use Policy and law enforcement agencies must submit biannual surveillance reports. The bill provides an exigent circumstances provision to law enforcement, which allows them to use unapproved surveillance devices in emergency situations.

“Over 100 law enforcement agencies in the state are thought to use some type of surveillance technology and many deploy multiple kinds without any public oversight or rules of the road. These are powerful devices that can collect a wide array of information allowing even the smallest of law enforcement agencies to cheaply and easily know where you go, who you speak with, and what you do.

“While technology can be used to improve public safety, its use should be balanced with reasonable safeguards for civil liberties and elected officials have the responsibility of

safeguarding the rights to civilian oversight, privacy and other civil liberties, as we strive for a safer environment. SB 21 proposes reasonable safeguards to ensure that law enforcement is held accountable for how they use surveillance technologies – that they are used only to fight crime, as they are intended to do.”

- 2) **Use of Surveillance Technology in California:** From June to November 2014, the ACLU of California examined thousands of publicly available records for California’s 58 counties and 60 selected cities. The ACLU looked at the types of surveillance technology in communities, including automated license plate readers (ALPRs), body cameras, drones, facial recognition, cell phone intercepts (CCIT or “Stingrays”), and video surveillance. The ACLU found that in California there are at least 90 communities (40 counties, 50 cities) possessing some form of surveillance technology. The ACLU found that video cameras were used in more than half of the cities and counties. ALPRs were used in 57 of the 118 counties and cities in our survey possess such devices. At least 32 California communities had body cameras as of November 2014.
([201501-aclu_ca_surveillancetech_summary_and_recommendations.pdf](#))

Local law enforcement agencies have also acquired newer technologies like drones and “Stingray” cell phone tracking devices that can be used for surveillance. According to the ACLU, at least three communities (San Jose and Los Angeles and Alameda Counties) have acquired drones for law enforcement purposes. The ACLU reports that Stingrays exist in at least 10 different communities, including Los Angeles, Oakland, San Jose, San Francisco, San Diego and Sacramento. (*Id.*)

The survey by the ACLU found a publicly available use policy for fewer than 1 in 5 surveillance technology programs. (*Id.*)

- 3) **Existing Law Requires Law Enforcement To Have Transparent Policies for the Use of the Surveillance Technologies of Automatic License Plate Recognition Systems (ALPR) and Cell Phone Intercepts (CCIT):** SB 34 (Hill) Chapter 532, Statutes of 2015, imposed a variety of security, privacy and public hearing requirements on the use of automated license plate recognition systems, as well as a private right of action and provisions for remedies. SB 34 specifically required that a public agency that operates or intends to operate an ALPR system to provide an opportunity for public comment at a public meeting of the agency's governing body before implementing the program.

SB 741 (Hill) Chapter 741, Statutes of 2015, prohibits a local agency from acquiring cellular communications interception technology unless approved by its legislative body. SB 741 also requires local agencies to develop and release a usage and privacy policy for CCIT.

- 4) **Santa Clara County Ordinance on Surveillance Technology:** On June 7, 2016, the Santa Clara County Board of Supervisors approved (5-0) a regulatory framework governing the acquisition and use of surveillance technology by County officials, including the Sheriff and District Attorney.

Under the new law, officials who want to purchase and use surveillance technology in Santa Clara County will have to meet the following requirements:

- a) Provide analysis of the privacy and due process implications of the technology they wish to acquire;
- b) Submit for approval a set of “use policies” governing the use of the technology, before the technology is acquired or used; and
- c) Report back annually on the use of the technology, in order to provide some measure of accountability.

The ordinance also provides that the Board of Supervisors, “...shall assess whether the benefits to the impacted County departments and the community of the surveillance technology outweigh the costs – including both the financial costs and reasonable concerns about the impact on and safeguards for privacy, civil liberties and civil rights.”

The ordinance addresses specific existing technologies (like surveillance cameras, automated license plate readers, and cell-site simulators), but also attempts cover surveillance technologies which have not yet been developed, by providing a broad definition of “surveillance technology.”

The ordinance provides law enforcement with exceptions in the case of “exigent circumstances,” that is in cases of “...an emergency involving danger of death or serious physical injury...” (<https://www.sccgov.org/sites/d5/newsmedia/press-releases/Pages/SurveillanceOrdinance.aspx>)

This bill takes a similar approach the Santa Clara County Ordinance.

- 5) **Broad Definition of Surveillance Technology in This Bill:** This bill defines “Surveillance technology” as any electronic device or system primarily intended to monitor and collect audio, visual, locational, thermal, or similar information on any individual or group. The definition goes on to specify that “surveillance technology” includes, but is not limited to, drones with cameras or monitoring capabilities, automated license plate readers, closed-circuit cameras/televisions, international mobile subscriber identity trackers, global positioning system technology, radio-frequency identification technology, biometrics-identification technology, and facial-recognition technology.

“... any electronic device or system primarily intended to monitor and collect audio, visual, locational, thermal, or similar information on any individual or group” is language which includes a number of technologies which are in common use by law enforcement. Such technologies include video and audio recording of suspect interviews, video cameras in holding cells within a local police department, or video surveillance in county jails. Such technologies might not merit separate approval by the governing entity of the law enforcement agency and an opportunity for public comment.

This bill does provide some limitations on its broad definition by listing some existing technologies which are excluded from the provisions of this bill. This bill specifies that “Surveillance technology” does not include standard public agency computers and software, fingerprint scanners, ignition interlock devices, cellular telephones, two-way radios, or other similar electronic devices.

The author intends that this bill expand transparency requirements to an extensive range of

surveillance technologies currently used by law enforcement agencies, and surveillance technologies that might be used in the future. In order meet that policy objective, a broad definition of “surveillance technology” is necessary. Adopting a broad definition of “surveillance technology” can avoid a piecemeal approach to dealing with each new technology individually. However, by creating such a broad definition of “surveillance technology,” this bill will include technologies used in routine law enforcement applications.

- 6) **This Bill Requires County Sheriffs and District Attorneys to get Approval by The Board of Supervisors in Their County to Use Surveillance Technology:** Opposition to this bill has pointed out that the requirement that county sheriffs and district attorneys get approval from the county board of supervisors before using surveillance technology is potentially in conflict with an existing statute.

California Government Code § 25303 states that the board of supervisors shall not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county. Section 25303 goes on to say that nothing in the section, including the language above, shall be construed to limit the budgetary authority of the board of supervisors over the district attorney or sheriff.

It is unclear if requiring a sheriff or district attorney to get approval from the board of supervisors before using surveillance technology would be found to be an impermissible obstruction of the investigative function of those offices. However, the language of Government Code § 25303 does raise the potential for conflict with the language of this bill. If the Legislature intends that the provisions of this bill requiring approval by the board of supervisors apply to sheriffs and district attorneys, notwithstanding Government Code § 25303, then clarification might be appropriate. This concern does not apply to any of the other law enforcement agencies covered in this bill.

- 7) **Argument in Support:** According to the *Electronic Frontier Foundation*, “All too often, government executives unilaterally decide to adopt powerful new surveillance technologies that invade our privacy, chill our free speech, and unfairly burden communities of color. These intrusive and proliferating tools of street-level surveillance include drones, cell-site simulators, surveillance cameras, and automated license plate readers.

“Under S.B. 21, the power to decide whether or not to adopt new surveillance technologies would rest instead with the elected bodies that govern police departments and other public agencies. Most importantly, S.B. 21 would require these governing bodies to provide the general public with an opportunity to comment on proposed surveillance technologies and use policies for these technologies, before deciding whether to adopt them. This will ensure community control over decision-making about these powerful spying tools.”

- 8) **Argument in Opposition:** According to the *California State Sheriff’s Association*, “This bill will dangerously provide a roadmap to criminals as to how and when law enforcement agencies deploy surveillance technology and techniques. SB 21 requires the surveillance policy to detail the types of surveillance used, what data can and are collected by the technology and how the surveillance technology is monitored for security. The risk involved in publicizing this sensitive information dwarfs any perceived benefit emanating from the desire to inform the public about how law enforcement operates as it relates to lawful

surveillance techniques.

“We are also concerned about the requirement that sheriffs submit the initial policy for approval, as well as amendments based on future technology acquisition, to the county board of supervisors. Sheriffs are independent elected officials and respectfully should not be required to obtain the approval of the board of supervisors before determining how to best carry out their duty to protect the public safety. In fact, by limiting the ability of the sheriff to acquire surveillance technology without the prior consideration of the policy by the board, SB 21 likely violates Government Code Section 25303, which states, in relevant part, ‘The board of supervisors shall not obstruct the investigative function of the sheriff of the county . . .’”

9) Related Legislation:

- a) SB 466 (Bates), would expand a rental company’s ability to use, access, and obtain information relating to a renter’s use of a vehicle obtained through electronic surveillance technology when the vehicle is the subject of an AMBER Alert. SB 466 is awaiting hearing in the Assembly Privacy and Consumer Protection Committee.
- b) AB 401 (Aguiar-Curry), would require a remote dispensing site pharmacy to utilize certain security measures, including capturing and retaining a recording of facility surveillance for 90 days. AB 401 is awaiting hearing in the Senate Committee on Business, Professions, and Economic Development.
- c) AB 1185 (O’Donnell), would expand a rental company’s ability to use, access, and obtain information relating to a renter’s use of a vehicle obtained through electronic surveillance technology when the rental vehicle has not been returned. Currently, a company must wait one week, and this bill would shorten that period to three calendar days. AB 1185 is awaiting hearing in the Senate Judiciary Committee.

10) Prior Legislation:

- a) SB 868 (Jackson), of 2015-2016 Legislative Session, would have regulated the use of unmanned aircraft and provided penalties for the violation of those prohibitions. SB 868 was held in the Assembly Privacy and Consumer Protection Committee.
- b) SB 34 (Hill) Chapter 532, Statutes of 2015, imposed a variety of security, privacy and public hearing requirements on the use of automated license plate recognition systems, as well as a private right of action and provisions for remedies.
- c) AB 1820 (Quirk), of the 2015-2016 Legislative Session, would have regulated the use of unmanned aircraft systems (UAS) by law enforcement agencies. AB 1820 was held in the Senate Judiciary Committee.
- d) SB 741 (Hill) Chapter 741, Statutes of 2015, requires local agencies to publicly approve or disclose the acquisition of CCIT. SB 741 also requires local agencies to develop and release a usage and privacy policy for CCIT.

- e) AB 1327 (Gorell), of the 2013-2014 Legislative Session, would have generally prohibited public agencies from using unmanned aircraft systems, with certain exceptions applicable to law enforcement agencies. AB 1327 was vetoed by the Governor.
- f) SB 262 (Galgiani), of the 2015-2016 Legislative Session, would have allowed a law enforcement agency to use an unmanned aircraft system if the agency complies with: (1) protections against unreasonable searches and seizures; (2) Federal Law applicable to the use of unmanned aircraft systems; and, (3) state law applicable to the use of surveillance technology. SB 262 was held in the Senate Judiciary Committee.
- g) SB 15 (Padilla), of the 2013-2014 Legislative Session, would have clarified when a law enforcement agency needs a warrant to use a unmanned aircraft system(UAS) and that an UAS cannot be used in a manner to invade a person's privacy. SB 15 was held in the Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Law Alliance
 California Civil Liberties Advocacy
 California Attorneys for Criminal Justice
 California Public Defenders Association
 Conference of California Bar Associations
 Council on American-Islamic Relations, California
 Electronic Frontier Foundation
 Firearms Policy Coalition
 San Jose Peace & Justice Center

Opposition

Association for Los Angeles Deputy Sheriffs
 Association of Deputy District Attorneys
 Association of Orange County Deputy Sheriffs
 California Association of Code Enforcement Officers
 California College and University Police Chiefs Association
 California District Attorneys Association
 California Narcotic Officers Association
 California Police Chiefs Association
 California State Sheriffs' Association
 California Statewide Law Enforcement Association
 Fraternal Order of Police
 League of California Cities
 Long Beach Police Officers Association
 Los Angeles County Probation Officers Union, AFSCME local 685
 Los Angeles County Professional Peace Officers Association
 Los Angeles County Sheriff's Department
 Los Angeles Police Protective League
 Peace Officers Research Association of California
 Riverside Sheriffs' Association

Sacramento County Deputy Sheriffs' Association
Sheriff of San Bernardino, John McMahon

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: August 23, 2017

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez Fletcher, Chair

SB 21

(Hill) – As Amended August 21, 2017

Policy Committee:	Public Safety	Vote:	4 - 2
	Privacy and Consumer Protection		6 - 3

Urgency: No	State Mandated Local Program: Yes	Reimbursable: Yes
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SUMMARY:

This bill requires law enforcement agencies to develop a Surveillance Use Policy for all surveillance technologies, and requires those policies to be available to the public for comment and posting. Specifically, this bill:

- 1) Requires, by July 1, 2018, a law enforcement agency that uses or accesses information from surveillance technology, to submit to its governing body, for adoption at a public hearing, a Surveillance Use Policy, which must be in writing and made publicly available. If the policy is not adopted, the law enforcement agency is required to cease the use of the surveillance technology within 30 days. Also requires law enforcement agencies to submit Surveillance Technology Use Reports, with specified information, to their governing bodies at least every two years.
- 2) Requires, by July 1, 2018, a sheriff's department or district attorney to hold a public hearing and provide an opportunity for comment before adopting a Surveillance Use Policy, which must be in writing and made publicly available. Also requires the posting of a Surveillance Technology Use Report, with specified information, on its Internet Web site at least every two years.
- 3) Requires, by July 1, 2018, the Department of Justice (DOJ) or the California Highway Patrol (CHP), if it uses or access information from a surveillance technology, to adopt a Surveillance Use Policy. Also requires the posting of a Surveillance Technology Use Report, with specified information, on its Internet Web site at least every two years.
- 4) Provides that any person could bring an action for injunctive relief to prevent a violation of the provisions of this bill and, if successful, could recover reasonable attorney's fees and costs.

FISCAL EFFECT:

- 1) Unknown but significant DOJ costs (GF). The Division of Law Enforcement (DLE) has identified the need for three positions, first year costs of \$265,000 and annual ongoing costs of \$427,000. The Criminal Law Division will see an increase in workload to assist DLE with online investigations, data collection and reporting regarding Surveillance Use Policies throughout the state; this significant cost is unknown.

- 2) Moderate CHP costs of approximately \$500,000 (Motor Vehicle Account) for personnel and programming to develop, build and test a database. The annual ongoing costs will not be as significant.
- 3) Unknown but significant costs, in the millions of dollars, for local law enforcement agencies to comply with the provisions of this bill. For example, the Los Angeles County Sheriff's office has identified the need for ten positions and \$600,000, to comply with the provisions of this bill. Some costs will be reimbursable, such as the cost to develop a Surveillance Use Policy, but other costs will not be reimbursable since they could be considered an extension of the Open Meetings and/or Public Records Act. The Commission on State Mandates will have to determine which activities constitute a reimbursable state mandate.

COMMENTS:

1) **Background.** Current law requires data collected through the use or operation of an automated license plate recognition (ALPR) system to be considered as personal information subject to existing law pertaining to agencies, persons, or businesses that conduct business in California, and that own or license computerized data including personal information. An ALPR operator that accesses ALPR information is required to maintain a record of that access and limits the use of that information for authorized purposes only, the operator is also required to maintain security procedures and practices to protect ALPR information. A public agency that operates or intends to operate an ALPR system is required to provide an opportunity for public comment at a regularly scheduled public meeting of the governing body of the public agency before implementing the program.

Current law requires a local government or law enforcement agency that operates cellular communications interception technology, as defined, to maintain reasonable security procedures and practices, and implement a usage and privacy policy, as specified. Current law prohibits a local government or law enforcement agency from acquiring cellular communications interception technology unless approved by its legislative body at a regularly scheduled public meeting. A county sheriff may acquire such technology after a public notice of the acquisition and adoption of a usage and privacy policy.

In addition to ALPR, surveillance technology includes facial recognition systems, portable biometric scanners, social media scrubbers, portable surveillance cameras, mounted closed caption cameras, drones, and radar systems.

2) **Purpose.** This bill is intended to address transparency concerns around the use of various kinds of surveillance technologies by law enforcement agencies by requiring public notice and usage policies for law enforcement agencies that wish to use any form of surveillance technology, which in some cases would also require public approval before deployment.

According to the author, "SB 21 expands the transparency requirements established for automatic license plate readers and cell-phone tracking devices established in 2015 to all surveillance technologies used by law enforcement agencies. This means surveillance technology will subject to public disclosure and local legislative review. Surveillance technologies must be governed by a Surveillance Use Policy and law enforcement agencies must submit biannual surveillance reports."

3) **Support and Opposition.** Supporters argue that requiring the governing body to approve the use of surveillance technology will ensure community control over these

powerful spying tools. In opposition, the Peace Officers Research Association of California, argues that oftentimes, public safety uses of surveillance technology that must remain confidential in order to enhance the efficacy.

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