

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1846 (Bauer-Kahan)
Version: March 13, 2024
Hearing Date: June 25, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

Judicial officers: training: sexual abuse and assault

DIGEST

This bill requires the Judicial Council of California (Judicial Council), on or before July 1, 2026, to establish judicial training programs for judges related to best practices related to treatment of alleged sexual abuse and assault victims in courtroom cases, as specified.

EXECUTIVE SUMMARY

This bill seeks to require judges to receive training regarding treatment of alleged sexual abuse and assault victims in courtroom cases. According to the California Department of Public Health, one in three women and one in four men report experiencing sexual violence involving physical contact in their lifetime, but the report likely “does not encompass how significant the problem is with many occurrences of sexual violence going unreported.”¹ The author and sponsor of the bill argue that this bill is a critical step forward for protecting survivors of sexual assault from further injury by callous treatment in the courtroom when they attempt to seek justice. There is precedence for the Legislature enacting mandatory training for the judicial branch in the case of domestic violence. The bill is sponsored by former Alameda County District Attorney Nancy O’Malley. The bill is supported by various entities, including survivors advocacy organizations, associations representing employment and consumer attorneys, and SAG-AFTRA. The Judicial Council is opposed, not because of the subject of the training, but because it is mandatory, arguing that legislatively mandated training impinges on judicial independence.

¹ *Sexual Violence/Rape Prevention and Education Program*, Cal. Dept. of Pub. Health, available at <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/SACB/Pages/SexualViolencePrevention.aspx#:~:text=In%20California%2C%20more%20than%201,physical%20contact%20in%20their%20lifetime.>

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Authorizes the Judicial Council to conduct institutes and seminars from time to time, either regionally or on a statewide basis, for the purpose of orienting judges to new judicial assignments, keeping them informed concerning new developments in the law and promoting uniformity in judicial procedure. (Gov. Code § 68551.)²
- 2) Requires the Judicial Council to establish judicial training programs for judges, referees, commissioners, mediators, and others who are deemed appropriate who perform duties in family law matters. (§ 68553.)
- 3) Requires, that to the extent resources are available, the Judicial Council to provide education on mental health and developmental disability issues affecting juveniles in delinquency proceedings to judicial officers and, as appropriate, to other public officers and entities that may be involved in the arrest, evaluation, prosecution, defense, disposition, and post disposition or placement phases of delinquency proceedings. (§ 68553.5.)
- 4) Requires the Judicial Council to establish judicial training programs for judges, referees, commissioners, mediators, and others as deemed appropriate by the Judicial Council who perform duties in family law matters.
 - a) The training program must include a family law session in any orientation session conducted for newly appointed or elected judges and an annual training session in family law.
 - b) The training in 7)(a) must include instruction in all aspects of family law, including effects of gender, gender identity, and sexual orientation on family law proceedings, the economic effects of dissolution on the involved parties, and the effects of allegations of child abuse or neglect made during family law proceedings. (Gov. Code, § 68553; Cal. Rules of Court, Rule 10.463.)
- 5) Requires the Judicial Council to establish judicial training programs for individuals who perform duties in domestic violence matters, including, but not limited to, judges, referees, commissioners, mediators, and others as deemed appropriate by the Judicial Council.
 - a) The training programs must include a domestic violence session in any orientation session conducted for newly appointed or elected judges and an annual training session in domestic violence.
 - b) The domestic violence training programs must include instruction in all aspects of domestic violence, including, but not be limited to, training on the detriment to children of residing with a person who perpetrates domestic violence and the fact that domestic violence can occur without a party seeking

² All further references are to the Government Code unless specified otherwise.

or obtaining a restraining order, without a substantiated child protective services finding, and without other documented evidence of abuse. (Gov. Code, § 68555; Cal. Rules of Court, Rule 10.464.)

- 6) Authorizes the Judicial Council to publish and distribute manuals, guides, checklists and other materials designed to assist the judiciary. (§ 68552.)

This bill:

- 1) Requires the Judicial Council, on or before July 1, 2026, to establish judicial training programs for judges related to best practices related to treatment of alleged sexual abuse and assault victims in courtroom cases.
 - a) The development of the training programs is required to include input by victim advocacy groups.
- 2) Requires the training programs developed pursuant 1), above, to be provided to all newly appointed or elected judges and to all judicial officers on an annual basis.
- 3) Authorizes the Judicial Council to offer the training by person or by using remote technology.

COMMENTS

1. Stated need for the bill

The author writes:

Survivors are not receiving justice. We must ensure court room proceedings are fair, appropriate, and do not cause further harm to victims of sexual violence. AB 1846 mandates that judges be trained about survivor-informed best practices for courtroom engagement with victims of sexual assault/violence. The fear of further trauma is often a barrier to victims reporting the crimes that have been committed against them. Behavior by some judges towards victims has a chilling effect that discourages more survivors from coming forward.

California courtrooms should not be causing further harm to survivors by virtue of careless or callous remarks. Victims are vulnerable in the courtroom setting, often forced to recall painful and terrifying facts while confronting their offender face to face. There is no reason why the quest for justice and sensitivity towards crime victims has to be mutually exclusive.

2. Background

Oftentimes it is essential for survivors of assault to testify in court in order to bring perpetrators to justice. This process is stressful and traumatic for survivors.

Unfortunately, a lack of understanding regarding the effects of sexual abuse or assault on survivors can lead to unfortunate experiences that cause more trauma. A recent example to illustrate this was seen in New Jersey in 2019 where a judicial training program was implemented after a judge asked a woman seeking a restraining order if she could have avoided the assault by, “closing her legs.”³ In 2010, the Commission on Judicial Performance (CJP) publically admonished a judge for saying a survivor of rape “didn’t put up a fight” during her assault and that if a person does not want to have sexual intercourse their body “will not permit that to happen.”⁴ The Chairman of the CJP at the time stated that such comments “cannot help but diminish public confidence and trust in the impartiality of the judiciary.” It should be noted that, unlike in New Jersey, the Judicial Council did not institute any specific training after this incident related to interacting with victims of sexual abuse or assault on their own accord.

3. Bill may implicate separation of powers

The Judicial Council is opposed to the bill stating that legislatively mandated training improperly impinges on judicial independence under the separation of powers doctrine. Section 3 of Article III of the California Constitution provides that the powers of state government are legislative, executive, and judicial, and that persons charged with the exercise of one power may not exercise either of the others except as permitted by the state constitution. The courts have held that “the focus in questions of separation of powers is ‘the degree to which [the] governmental arrangements comport with, or threaten to undermine, either the *independence and integrity* of one of the branches or levels of government, or the ability of each to fulfill its mission in checking the others so as to preserve the *interdependence* without which independence can become domination.’” (*City of Sacramento v. California State Legislature* (1986) 187 Cal.App.3d 393, 398-99 (emphasis in original; citation omitted).)

The assignment power is constitutionally provided to the Chief Justice in furtherance of the Chief Justice’s constitutional duty to “seek to expedite judicial business” and “equalize the work of judges.” (Cal. Const., art. VI, § 6(e).) Courts have consistently held that broad discretionary authority over the judicial assignment process is essential to the Chief Justice’s ability to fulfill this duty. (See, e.g., *Mahler v. Jud. Council of California* (2021) 67 Cal. App. 5th 82, 96–97.) Though there is no case law directly on point regarding mandating training for judges, this type of Legislative mandate may fall within the realm of impermissible interference under the separation of powers doctrine. Regardless of the constitutionality of a mandatory training requirement, the Judicial Council asserts it is an inappropriate interference in the independence of the judicial branch, writing:

³ Debra Weiss, *State orders training for judges after rape comment controversies; 'good family' judge resigns*, ABA Journal, (Jul. 18, 2019), available at: <https://www.abajournal.com/news/article/state-orders-training-for-judges-after-rape-comment-controversies-good-family-judge-resigns/>.

⁴ *California judge says victim's body can prevent rape*, Guardian, (Dec. 14, 2021), available at <https://www.theguardian.com/society/2012/dec/14/us-judge-victims-body-prevent-rape>.

As with prior bills mandating specific judicial training, the council's opposition is not based on the importance of providing training in the designated subject matter area, but rather the impingement on judicial independence that a legislative training mandate represents. The council provides training on the complexities of handling cases involving sexual assault in a variety of educational contexts, including a two-day experienced assignment course that covers the dynamics of sexual assault cases, the needs of the victim and specially mandated accommodations, and myths and misconceptions about sexual assault victims and offenders. This expansion of the Legislature's efforts to regulate judicial training represents an unnecessary intrusion into the operations of the judicial branch, especially as it has demonstrated a commitment to robust training on these topics.

However, the Legislature has enacted mandatory judicial training statutes before. In 1987, the Legislature enacted Section 68553 to require the Judicial Council to establish judicial training programs for judges, referees, commissioners, mediators, and others as deemed appropriate who perform duties in family law matters. (SB 1209 (Roberti, Ch. 1134, Stats. 1987); § 68553.) Most relevant to this bill, in 1996 the Legislature required the Judicial Council to establish judicial training programs for individuals who perform duties in domestic violence matters. (AB 2819 Caldera (Ch. 695, Stats. 1996); § 68555.) AB 2819 required the training program to include a domestic violence session in any orientation session conducted for newly appointed or elected judges and an annual training session in domestic violence. (*Ibid.*)

4. Other concerns raised by Judicial Council

The Judicial Council writes that the specific requirement that the training "include input by victim advocacy groups" creates an appearance that judicial training "would be biased in favor of an interpretation of the law and court procedures that is advocacy based, rather than neutral." They further note that "it raises concerns that [victim advocacy groups] will emphasize the needs of alleged victims over other concerns for the courts in providing due process."

Lastly, Judicial Council states that requiring the training to be received annually is unprecedented and unnecessary, and would require existing training courses to be "discontinued in order to reallocate resources to provide" the training mandate under the bill. They conclude that the courts "must function and provide access to justice for the public so there is a limited amount of time that judges can allocate to training each year" and that the training "should be determined within the branch and meet the specific needs of each judicial assignment."

In order to address the above concerns raised by the Judicial Council the author may wish to amend the bill to instead:

- have the training be informed by research and evidence on the impacts of sexual abuse and assault victims;
- have the training provided as part of any orientation session or initial training for new judges and upon assignment to juvenile court, family court, criminal court, or other assignments deemed appropriate by the Judicial Council; and
- have the training made available to all judicial officers on an annual basis.

5. Proposed amendments

The specific amendments are as follows:⁵

Section 68556 is added to the Government Code, to read:

68556. (a) On or before July 1, 2026, the Judicial Council shall establish judicial training programs for judges related to best practices related to treatment of alleged sexual abuse and assault victims in courtroom cases. The development of the training programs shall ~~include input by victim advocacy groups.~~ *be informed by research and evidence on the impact of sexual abuse and assault on victims.*

(b) (1) Commencing January 1, 2027, the training programs developed pursuant to subdivision (a) shall be provided to *both of the following:*

(A) All newly appointed or elected judges ~~and to~~ *as part of any orientation session or initial training.*

(B) All judicial officers ~~on an annual basis.~~ *upon assignment to family court, juvenile court, criminal court, and any others deemed appropriate by the Judicial Council.*

(2) *The training shall be made available to all judicial officers on an annual basis.*

(c) The Judicial Council, at its discretion, may offer the training required by this section in person or by using remote technology.

6. Statements in support

ValorUS, a sexual assault survivor advocacy organization, writes in support:

This bill is sorely needed to improve the ability of the court to recognize and respond to trauma resulting from sexual violence.

This is reflected in some high-profile cases where judges allowed abusive or dehumanizing cross examination, or regrettably, in the behavior of the presiding judges themselves. Testifying in court is often a traumatic experience for survivors. We must do everything possible to ensure that the courtroom setting is fair and

⁵ The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel as well as the addition of co-authors.

respectful. Training is critical for judges to understand survivors' behavior and the effects that testifying may have on them. Further, it can inform judges on how they can mitigate potential negative effects from testifying and establish ways to have a more positive impact on a sexual abuse victim's experience with the justice system.

SUPPORT

Nancy O'Malley, former Alameda County District Attorney (sponsor)
California Employment Lawyers Association
California Faculty Association
City of West Hollywood
Consumer Attorneys of California
KBM Law
SAG-AFTRA
Stand With Survivors
ValorUS

OPPOSITION

Judicial Council of California

RELATED LEGISLATION

Pending Legislation:

SB 1356 (Wahab, 2024) requires the Judicial Council, when developing any training on gender bias, to consider the role of gender in court proceedings and meeting the needs of litigants in unique situations of vulnerability.

SB 1386 (Caballero, 2024) extends the Rape Shield Law's prohibition on evidence of a plaintiff's past sexual conduct to include introduction for purposes of attacking the credibility of a plaintiff's testimony regarding consent or the amount of harm suffered, and extends the restrictions to cover admission for lack of harm and reworks provisions governing civil actions for sexual battery involving a minor. SB 1386 is pending on the Assembly Floor.

Prior Legislation:

SB 331 (Rubio, Ch. 865, Stats. 2023), among other things, required the Judicial Council to establish judicial training programs for individuals, including judicial officers and referees, who perform duties in domestic violence or child custody matters, including, among other topics, child sexual abuse and coercive control, as specified.

AB 2819 (Caldera, Ch. 695, Stats. 1996) *see* Comment 3, above.

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SB 1209 (Roberti, Ch. 1134, Stats. 1987 *see* Comment 3, above.

PRIOR VOTES

Assembly Floor (Ayes 73, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)
