

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

AB 2125 (Garcia)
Version: May 16, 2024
Hearing Date: June 25, 2024
Fiscal: Yes
Urgency: No
ME

SUBJECT

Judicial officers: disqualification

DIGEST

This bill requires that on or before September 30, 2027, the California Law Revision Commission (CLRC) shall deliver to the Legislature, as specified, a study regarding recusal of judicial officers for prejudice and conflict of interest. The bill requires that the CLRC consult with the Commission on Judicial Performance in developing the study and that the study include a discussion of specified issues.

EXECUTIVE SUMMARY

The California Law Revision Commission (CLRC) was created in 1953 and tasked with the responsibility for a continuing substantive review of California statutory and decisional law. The CLRC studies the law in order to discover defects and make related recommendations to the Legislature for needed reforms.

The CLRC's enabling statute recognizes two types of topics the CLRC is authorized to study: (1) those that the CLRC identifies for study and lists in the Calendar of Topics that it reports to the Legislature; and (2) those that the Legislature assigns to the CLRC directly, by statute or concurrent resolution. Once the CLRC identifies a topic for study, it cannot begin to work on the topic until the Legislature, by concurrent resolution, authorizes the CLRC to conduct the study. Direct legislative assignments have become much more common in recent years, and many of the CLRC's recent studies were directly assigned by the Legislature.

The CLRC is governed by Government Code Section 8293 which sets out the broad list of topics it is authorized to study. This authorization must be renewed in a concurrent resolution at least once per two-year legislative session. The most recent reauthorization was through ACR 24 (Chau, 2021). ACR 169 (Kalra, 2024) reauthorizes the CLRC to study the 14 topics that were authorized by ACR 24. ACR 169 is currently pending in the Senate Judiciary Committee.

AB 2125 adds a topic for the CLRC to study. Specifically, this bill requires that on or before September 30, 2027, the CLRC shall deliver to the Legislature a study regarding recusal of judicial officers for prejudice and conflict of interest. The bill requires that the CLRC consult with the Commission on Judicial Performance in developing the study.

This bill is sponsored by the Asian Law Alliance and the William C. Velasquez Institute, and is supported by a coalition of legal aid organizations and advocates for the rights of immigrants. The bill is opposed by the California Academy of Appellate Lawyers and the California Judges Association, who had issues with a prior version of the bill.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that every judge has a duty to decide any proceeding in which they are not disqualified. (Code Civ. Proc. § 170.)
- 2) Requires a judge to be disqualified if any of the following are true:
 - a) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding, as specified;
 - b) the judge served as a lawyer in the proceeding, or in any other proceeding involving the same issues they served as a lawyer for a party in the present proceeding or gave advice to a party in the present proceeding upon a matter involved in the action or proceeding, as specified;
 - c) the judge has a financial interest in the subject matter in a proceeding or in a party to the proceeding, as specified;
 - d) the judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding or an officer, director, or trustee of a party;
 - e) a lawyer or a spouse of a lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent of the judge or the judge's spouse or if such a person is associated in the private practice of law with a lawyer in the proceeding;
 - f) by reason of permanent or temporary physical impairment, the judge is unable to properly perceive the evidence or is unable to properly conduct the proceeding;
 - g) the judge has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding prospective employment or service as a dispute resolution neutral, or has been engaged in that employment or service, as specified;

- h) the judge has received a contribution in excess of one thousand five hundred dollars (\$1500) from a party or lawyer in the proceeding, as specified; or
 - i) the judge believes their recusal would further the interests of justice, the judge believes there is a substantial doubt as to their capacity to be impartial, or the judge believes a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. (Code Civ. Proc. § 170.1 (a).)
- 3) Requires a judge who determines themselves to be disqualified to notify the presiding judge of the court of their recusal and not further participate in the proceeding, except as provided, unless their disqualification is waived by the parties, as specified. (Code Civ. Proc. § 170.3 (a).)
- 4) Provides that if a judge who should disqualify themselves refuses or fails to do so, any party may file with the clerk a written verified statement objecting to the hearing or trial before the judge and setting forth the facts constituting the grounds for disqualification of the judge at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification. (Code Civ. Proc. § 170.3 (c)(1).)
- 5) Prohibits a judge, court commissioner, or referee of a superior court of the State of California from trying a civil or criminal action or special proceeding of any kind or character or hear any matter therein that involves a contested issue of law or fact when it is established that the judge or court commissioner is prejudiced against a party or attorney or the interest of a party or attorney appearing in the action or proceeding. (Code Civ. Proc. § 170.6 (a)(1).)
- 6) Provides that a party to, or an attorney appearing in, an action or proceeding may establish the prejudice required by 5) by an oral or written motion without prior notice supported by affidavit or declaration under penalty of perjury, or an oral statement under oath, that the judge, court commissioner, or referee before whom the action or proceeding is pending, or to whom it is assigned, is prejudiced against a party or attorney, or the interest of the party or attorney, so that the party or attorney cannot, or believes that they cannot, have a fair and impartial trial or hearing before the judge, court commissioner, or referee. (Code Civ. Proc. § 170.6 (a)(2).)
- 7) Provides that if the motion prepared pursuant to 6) is duly presented, and the affidavit or declaration under penalty of perjury is duly filed or an oral statement under oath is duly made, thereupon and without any further act or proof, the judge supervising the master calendar, if any, must assign some other judge, court commissioner, or referee to try the cause or hear the matter, and in other cases, the trial of the cause or the hearing of the matter must be assigned or transferred to another judge, court commissioner, or referee of the court in which the trial or matter is pending or, if there is no other judge, court commissioner, or referee of the court in which the trial or matter is pending, the Chair of the Judicial Council must

assign some other judge, court commissioner, or referee to try the cause or hear the matter as promptly as possible. (Code Civ. Proc. § 170.6 (a)(4).)

- 8) Provides that the provisions of 5) through 7) do not apply to a judge designated or assigned to serve on the appellate division of a superior court in the judge's capacity as a judge of that division. (Code Civ. Proc. § 170.7.)
- 9) Provides that: the CLRC shall file a report at each regular session of the Legislature that shall contain a calendar of topics selected by it for study, including a list of the studies in progress and a list of topics intended for future consideration; the CLRC shall confine its studies to those topics set forth in the calendar contained in its last preceding report that have been or are thereafter approved for its study by concurrent resolution of the Legislature; and that the CLRC shall also study any topic that the Legislature, by concurrent resolution or statute, refers to it for study. (Gov. Code § 8293 (a).)

This bill:

- 1) Requires that on or before September 30, 2027, the CLRC shall deliver to the Legislature, as specified, a study regarding recusal of judicial officers for prejudice and conflict of interest.
- 2) Provides that in developing the study the CLRC shall consult with the Commission on Judicial Performance.
- 3) Requires that the study include, at minimum, a discussion of the following:
 - the effectiveness of Section 170.6 and other existing mechanisms in eliminating bias in judicial proceedings;
 - the prevalence of judicial officers hearing matters in which the canons of judicial ethics should have warranted a recusal;
 - the impact on case hearing times of judicial recusals; and
 - the costs to the courts and to litigants of judicial recusals.
- 4) Provides that the provisions of this bill shall become inoperative on September 30, 2031, and, as of January 1, 2032, are repealed.

COMMENTS

1. Stated need for the bill

According to the author:

AB 2125 mandates a comprehensive study by the California Law Revision Commission, in collaboration with the Commission on Judicial Performance, to thoroughly examine the recusal practices of judicial officers. This study will assess the effectiveness of current mechanisms in eliminating bias, the prevalence of judges presiding over cases where ethical standards suggest they should have recused themselves, and the consequent impact on case hearing times and the costs incurred by both the courts and litigants. Public confidence in the judiciary is at an all-time low, and it is imperative that we take concrete actions to restore faith in our legal system. By investigating and addressing the roots of perceived and actual biases, this bill aims to ensure that all individuals receive fair and impartial treatment in our courts. The findings and recommendations of the study will guide future legislative and judicial reforms, helping to build a more transparent, accountable, and trustworthy judiciary. This bill not only addresses current concerns but also lays the groundwork for long-term improvements in the administration of justice in California.

2. CLRC would be required to study the issue of recusal of judicial officers for prejudice and conflict of interest

As explained in the Assembly Judiciary Committee analysis for this bill:

[. . .] Typically, the judicial branch of government had been held in higher esteem than more politicized branches of the government. However, likely as a result of a series of scandals and stories of questionable ethical activities at the United States Supreme Court, the public's confidence in the judiciary has fallen. From Justice Clarence Thomas's multiple indiscretions (questionable loans, free travel, and unreported gifts) to Justice Samuel Alito's penchant for taking expensive fishing trips with corporate lobbyists, to Justice Sonya Sotomayor pressuring public institutions where the justice was speaking to buy copies of her book, the Supreme Court's behavior has significantly harmed the public faith in the justice's neutrality and ability to fairly render legal decisions. (Alison Durkee, *Here Are All The Supreme Court Controversies That Led To Adopting An Ethics Code*, Forbes (Nov. 14, 2023) available at: <https://www.forbes.com/sites/alisondurkee/2023/11/14/here-are-all-the-supreme-court-controversies-that-led-to-adopting-an-ethics-code/?sh=136ad0ab64ca>.)

Unfortunately, questionable decision making and eroding public trust is not limited to the federal judiciary. In 2017, following a scandal regarding the

purchase of a \$32,000 sofa for his chambers, the Chief Justice of the West Virginia Supreme Court was indicted on 22 felony charges. (Carol Funk, Public Confidence and the Courts: Pillars of the Rule of Law, ABA Magazine (Feb. 17, 2023).) In 2022, the Montana Legislature issued subpoenas to the judicial branch after allegations surfaced that court computers and other public resources had been used by judges to assist their trade association in mounting a challenge to a proposed statute. (*Ibid.*) As a result of these and similar scandals, a study by the National Judicial College noted that 63 percent of judges believed their esteem in the eyes of the public was falling. (*Ibid.*) Other public polling mimics these results. A 2023 study by the National Center for State Courts noted that only 61 percent of Americans surveyed had “confidence” in state courts. (<https://www.ncsc.org/consulting-and-research/areas-of-expertise/court-leadership/state-of-the-state-courts>.) Furthermore, the percentage of Americans stating that state courts do not provide equal justice to all increased by 7 percentage points over the last decade and the number of Americans who stated they have faith in the court’s ability to provide equal justice declined by nearly ten percent. (*Ibid.*)

Whether or not this data is fair to the majority of judges, in California and nationally, the above described data paints a troubling picture of the degradation of public faith in the judiciary. Given that the same survey by the National Center for State Courts noted that the public holds an equally skeptical views of state legislatures, any actions by this Committee that may be perceived as shielding judges from public scrutiny, including for potential conflicts or bias, must be carefully evaluated.

Accordingly, this bill requires that on or before September 30, 2027, the CLRC shall deliver to the Legislature a study regarding recusal of judicial officers for prejudice and conflict of interest and requires that the CLRC consult with the Commission on Judicial Performance in developing the study.

The Inland Coalition for Immigrant Justice writes the following in support of the bill:

[. . .] Judicial impartiality is a cornerstone of our legal system. When parties involved in legal actions believe that they cannot receive a fair and impartial hearing due to perceived prejudice or conflicts of interest from judicial officers, it undermines public trust in the judiciary. AB 2125 seeks to address these concerns in Superior Courts by commissioning comprehensive research and analysis on the current state of affairs in the Superior Courts. [. . .]

Opposition letters focus on provisions that were amended out of the bill in the Assembly.

SUPPORT

Asian Law Alliance (sponsor)
William C. Velasquez Institute (sponsor)
Central Valley Opportunity Center
First Day Foundation
Inland Coalition for Immigrant Justice
La Cooperativa Campesina de California
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Proteus, Inc.

OPPOSITION

California Academy of Appellate Lawyers
California Judges Association

RELATED LEGISLATION

Pending Legislation:

AB 1906 (Gipson, 2024) requires the CLRC, with input from stakeholders, to complete and submit a study to the Legislature on how to remove the terms “dependent adult” and “dependent person” from existing code sections. The bill requires the CLRC to convene a working group that includes the protection and advocacy agency, persons described by those terms, and groups representing those persons. The bill requires the study to include recommendations on how to replace the terms with new terminology that would respectfully describe those persons and preserves the legal rights and protections of those and other persons. AB 1906 is currently in the Senate Appropriations Committee.

ACR 169 (Kalra, 2024) grants approval to the CLRC to continue its study of 14 designated topics that the Legislature previously authorized or directed the CLRC to study. The measure is currently in the Senate Appropriations Committee.

Prior Legislation:

ACR 24 (Chau, Res. Ch. 108, Stats. 2021) authorized the CLRC to continue its study of 13 topics and added an additional topic of study regarding states of disaster or emergencies.

ACR 173 (Gallagher, Res. Ch. 26, Stats. 2020) authorized the CLRC to continue its study of 13 topics.

SCR 91 (Roth, Res. Ch. 158, Stats. 2018) granted approval to the CLRC to continue its study of designated topics that the Legislature previously authorized or directed the CLRC to study; authorized and requested the CLRC to study and report on topics

relating to hazardous waste control and hazardous substances; provided that before commencing work on any project within the list of topics authorized for study by the Legislature, the CLRC shall submit a detailed description of the scope of work to the Senate and Assembly Committees on Judiciary and any legislative policy committee with jurisdiction over the study's subject matter; and expressly allowed the CLRC to provide copies of its recommendations to members of a legislative policy committee and invited CLRC staff to hearings for the purpose of explaining recommendations and answering questions from committee members.

ACR 148 (Chau, Res. Ch. 150, Stats. 2016) authorized the CLRC to continue its studies on whether specified laws should be revised; authorized an additional study of the California Public Records Act; provided that before commencing work on any project within the list of topics authorized for study by the Legislature, the CLRC shall submit a detailed description of the scope of work to the Senate and Assembly Committees on Judiciary and any legislative policy committee with jurisdiction over the study's subject matter; and expressly allowed the CLRC to provide copies of its recommendations to members of a legislative policy committee and invite CLRC staff to hearings for the purpose of explaining recommendations and answering questions from committee members.

SCR 54 (Padilla, Res. Ch. 115, Stats. 2013) authorized the CLRC report on and prepare recommended legislation concerning statutes governing access by state and local government agencies to customer information from communications service providers.

AB 567 (Wagner, Res. Ch. 15, Stats. 2013) repealed the requirement that the CLRC make the decennial recommendations, and retained the CLRC's general authority to study, review, and make recommendations regarding the enforcement of judgments law.

ACR 125 (Papan, Res. Ch. 167, Stats. 2002) authorized the CLRC to study, report on, and prepare recommended legislation concerning the issue of financial privacy to address protection and control of a consumer's personal information and provide both administrative and civil penalties.

PRIOR VOTES:

Assembly Floor (Ayes 66, Noes 0)
Assembly Appropriations Committee (Ayes 11, Noes 3)
Assembly Judiciary Committee (Ayes 9, Noes 2)
