

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 412 (Reyes)
Version: June 23, 2021
Hearing Date: July 6, 2021
Fiscal: Yes
Urgency: No
AWM

SUBJECT

California Commission on Human Rights

DIGEST

This bill establishes the California Commission on Human rights to advise on the protection of human rights within the state.

EXECUTIVE SUMMARY

While individual cities within California have human rights commissions, there is no state-level body dedicated to identifying and evaluating California’s successes and failures in protecting human rights and determining statutory, regulatory, or budgetary solutions to better protect human rights in the future. This bill establishes the California Commission on Human Rights to fill that role. The California Commission on Human Rights would, subject to an appropriation by the Legislature, develop specific projects, reports, campaigns, and make recommendations as concerns about human rights violations arise; provide technical assistance relating to human rights to members of the Legislature, the Governor’s office, and state agencies; and coordinate and work with existing government agencies and bodies in order to ensure complete intersectionality and close representational gaps within state government. The bill includes a five-year sunset provision.

This bill is sponsored by the Council on American-Islamic Relations – California (CAIR-CA), the Coalition for Humane Immigrant Rights (CHIRLA), and the Center on Law and Poverty. The bill is supported by the California Federation of Teachers, the National Association of Social Workers, California Chapter, and The Arc and United Cerebral Palsy California Collaboration. The bill is opposed by the Israeli-American Civil Action Network (ICAN). This bill passed out of the Senate Governmental Organizations Committee with a vote of 10-4.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Recognizes that all people are by nature free and independent and have inalienable rights, including enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety, happiness, and privacy. (Cal. Const., art. I, § 1)
- 2) Establishes various commissions within the state government, including:
 - a) The Commission on the Status of Women and Girls, which studies policy areas relating to gender equity and acts as an information center on issues that affect the lives of women and girls. (Gov. Code, tit. 2, div. 1, ch. 3.1, §§ 8240 et seq.)
 - b) The Commission on Asian and Pacific Islander American Affairs, which advises the Governor, the Legislature, and state agencies, departments, and commissions on issues relating to the social and economic development, and the rights and interests of Asian and Pacific Islander American communities and on how to respond most effectively to the views, needs, and concerns of those communities. (Gov. Code, tit. 2, div. 1, ch. 3.3, §§ 8255 et seq.)
 - c) The Healthy California for All Commission, an independent body to develop a plan for California's health care system that includes options for providing coverage and access through a unified financing system. (Health & Saf. Code, div. 1, pt. 4, §§ 1000 et seq.)
 - d) The California Commission on Aging, which serves as the principal advocate body in the state on behalf of older individuals, including, but not limited to, advisory participation in the consideration of all legislation and regulations made by state and federal departments and agencies relating to programs and services that affect older individuals. (Welf. & Inst. Code, div. 8.5, ch. 3, §§ 9200 et seq.)

This bill:

- 1) Makes the following findings and declarations:
 - a) The defense of human rights is crucial in promoting equity and equality amongst all Californians, but namely populations who have historically had their human and civil rights violated.
 - b) Prejudice and discrimination on the bases of race, color, creed, religion, national origin, ancestry, place of birth, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability status, HIV status, weight, height, or socioeconomic class infringes on the unalienable human rights of all people.
 - c) The creation of the California Commission on Human Rights will allow for the adequate exploration and identification of ways in which the State of

- California can promote the protection of human rights so that residents of California have equal economic, political, and educational opportunity without prejudice or discrimination.
- 2) Establishes in the state government the California Commission on Human Rights.
 - 3) Provides that the Commission shall consist of 17 members, appointed as follows:
 - a) Three Members of the Senate and one public member appointed by the Senate Committee on Rules.
 - b) Three Members of the Assembly and one public member appointed by the Speaker of the Assembly.
 - c) One public member appointed by the Superintendent of Public Instruction.
 - d) One public member appointed by the Attorney General.
 - e) Seven public members appointed by the Governor with the consent of the Senate.
 - 4) Provides that the Members of the Legislature serve at the pleasure of the appointing bodies, and public member appointees of the Speaker of the Assembly and the Senate Committee on Rules, and appointees of the Superintendent of Public Instruction, the Attorney General, and the Governor, shall serve four-year terms.
 - 5) Provides that members of the commission shall serve without compensation but may be reimbursed for actual and necessary travel expenses.
 - 6) Grants the Commission the powers and authorities necessary to carry out the duties imposed on it, including:
 - a) To employ administrative, technical, and other personnel as may be necessary to perform its powers and duties.
 - b) To hold informational hearings, make and sign agreements, and to do or perform any acts that may be necessary, desirable, or proper to carry out the purposes of this chapter.
 - c) To cooperate with, and secure the cooperation of, any department, division, board, bureau, commission, or other agency of the state to facilitate it properly to carry out its powers and duties hereunder.
 - d) To appoint advisers or advisory committees from time to time when the commission determines that the experience or expertise of advisers or advisory committees is needed for specific projects of the commission.
 - e) To find and accept funding sources outside of the state General Fund to assist with the projects of the commission, including, but not limited to, (1) accepting federal funds granted by Congress or executive order; (2) locating and applying for federal grant programs; and (3) accepting gifts, donations, or bequests.
 - 7) Requires the Commission to meet at least four times each year.

- 8) Requires the Commission to do all of the following:
 - a) Identify and evaluate California's successes and failures in protecting the human rights of all individuals living within the state, including (1) California's sanctuary state policies and the status of the protection of the rights of refugees, asylum seekers, and undocumented Californians; (2) the relationship between local government entities and marginalized communities, including the impact of those entities' policies on those communities; (3) the status of labor protections for marginalized populations in the state, including California's migrant labor population; and (4) the status of marginalized populations' access to educational opportunities and the protection of human rights and civil liberties across California's education system.
 - b) Determine statutory, regulatory, or budgetary solutions to better protect human rights across California, giving primary consideration to historically, and currently, marginalized populations.
 - c) Report, at least annually, on the status of human rights to the Legislature and the Governor's office, with statutory and regulatory recommendations for the Legislature to adopt.
 - d) Develop specific projects, reports, campaigns, and recommendations as concerns that violate human rights arise.
 - e) Provide technical assistance to the Members of the Legislature, the Governor's office, and state agencies.
 - f) Coordinate and work with existing government agencies and bodies in order to ensure complete intersectionality, and to close representational gaps, within state government.

- 9) Provides that the Commission is an advisory commission only, and there is no right or obligation on the part of the state or the parties meeting and conferring to implement the findings of the Commission without the adoption of legislation, regulations, or an executive order specifically authorizing those findings.

- 10) Defines "human rights," for purpose of the Commission, as rights defined, enumerated, or set forth by, but not limited to, each of the following:
 - a) The California Constitution.
 - b) The United States Constitution.
 - c) The United Nations Universal Declaration of Human Rights.
 - d) Other critical human rights documents that the Commission sees fit.

- 11) Creates the California Commission on Human Rights Fund (Fund) in the General Fund to carry out the provisions of this bill and to support the Commission, upon appropriation by the Legislature in the annual Budget Act. Subject to the approval of the Department of Finance, any monies received by the Commission as gifts, bequests, donations, or grant funds shall be deposited into the Fund in accordance

with the terms of the gift of donation and with Government Code sections 8647, 11005, 11005.1, and 16302.

- 12) Provides that the Fund shall also be used to increase community access to Commission meetings, projects, and deliberations by community organizations and impacted members of the public in the form of travel reimbursement, contracted partnerships or grant programs, or in other ways the Commission deems appropriate.
- 13) Provides that the above provisions will remain in effect only until January 1, 2027, and as of that date be repealed.

COMMENTS

1. Author's comment

According to the author:

The protection of human rights for all should be an essential service of government. The impacts of COVID-19 on marginalized communities, rising disparities in access to justice and the shameful rise in hate crimes toward the Asian Pacific Islander and Muslim American community are just a few of the ongoing issues facing California that require a new focus and commitment to human rights. AB 412 establishes the California Commission on Human Rights, which will identify human rights concerns and abuses and produce appropriate policy recommendations. Having this Commission will ensure that Californians have an entity whose sole focus and interest is the protection of their most fundamental rights during a period for our world where so much is uncertain; while also keeping California at the forefront of this vital public policy. AB 412 and the creation of the California Commission on Human Rights would illustrate California's commitment to protecting and advancing social justice.

2. This bill establishes a California Commission on Human Rights to apply an intersectional approach to protecting human rights in California

AB 412 establishes the Commission as an advisory commission tasked with identifying and evaluating California's successes and failures in protecting human rights of individuals living within the state, determining solutions to better protect human rights, and reporting, at least annually, on the status of human rights to the Legislature and the Governor with statutory and regulatory recommendations. The Commission would focus on historically marginalized communities and the relationships between state and local government policies and those communities, and partner with community-based organizations to develop partnerships and projects that will make the Commission's efforts more effective in those communities.

California already has a number of commissions dedicated to specific subsets of the population, such as the Commission on Aging,¹ the Commission on the Status of Women and Girls,² and the Commission on Asian and Pacific Islander American Affairs.³ California does not, however, have a commission dedicated to studying and reporting on human rights holistically. This bill would fill that gap by establishing the Committee to examine *all* human-rights-related issues in the state.

Many states have human rights commissions dedicated to enforcing specific antidiscrimination laws,⁴ but Committee staff is unaware of any statewide human rights commission with a mandate as expansive as the one in this bill. Some cities and counties, however – including some in California – have developed more broadly, intersectionally focused human rights commissions.⁵

The bill defines “human rights” broadly, drawing on the rights set forth in the California Constitution, the United States Constitution, the United Nations Universal Declaration of Human Rights (UNUDHR), and other critical human rights documents that the Commission sees fit to consider. The state and federal constitutions straightforwardly establish human rights in this state, and the United States was one of 45 countries to adopt the UNUDHR in 1948.⁶

ICAN, who opposes the bill in its current form, objects to the inclusion of the UNUDHR as well as the catchall provision. These objections are based on ICAN’s concerns about more recent actions by the United Nations Human Rights Council and its approach towards Israel, not the UNUDHR or any other specific documents that the Commission might ultimately choose to rely on. The author states in response that the goal of the Commission is to examine the state of human rights in California, so there is no reason to believe that the United Nations Human Rights Council’s proclamations about another country would be relevant to the Commission’s work. Nevertheless, the author has pledged to continue working in good faith with ICAN on possible alternative language.

¹ Welf. & Inst. Code, div. 8.5, ch. 3, §§ 9200 et seq.

² Gov. Code, tit. 2, div. 1, ch. 3.1, §§ 8240 et seq.

³ Gov. Code, tit. 2, div. 1, ch. 3.3, §§ 8255 et seq.

⁴ See, e.g., Alas. Stats. § 18.80.010; 775 ILCS 5/8-101; Rev. Code Wash. tit. 49, ch. 49.60.050.

⁵ See, e.g., City and County of San Francisco, Human Rights Commission, <https://sf-hrc.org/> [last visited Jul. 2, 2021]; County of Santa Clara, Human Relations Commission, <https://countyexec.sccgov.org/human-relations-commission> [last visited Jul. 2, 2021]; City of New York, NYC Human Rights, <https://www1.nyc.gov/site/cchr/index.page> [last visited Jul. 2, 2021]. The term “intersectionality” was coined by Kimberlé Crenshaw as “a lens, a prism, for seeing the way in which various forms of inequality often operate together and exacerbate each other,” for example, how white supremacy and misogyny combine to repress Black and Latina women. (See Steinmetz, *She Coined the Term ‘Intersectionality’ Over 30 Years Ago. Here’s What It Means to Her Today*, Time (Feb. 20, 2020), <https://time.com/5786710/kimberle-crenshaw-intersectionality/> [last visited Jul. 2, 2021].

⁶ See United Nations Department of Public Information, *Yearbook of the United Nations, 1948-1949* (1950) at p. 534.

Moreover, to the extent the catchall provision could result in an overly generous or counterproductive interpretation of the definition of human rights, the Commission's members serve at the pleasure of the appointing powers; this should serve as a check against the Commission being hijacked by a member with a detrimental agenda. Additionally, this bill will sunset on January 1, 2027, giving the Legislature the opportunity to consider the Commission's interpretation of human rights in practice and to tweak its mandate as necessary.

3. Arguments in support

According to bill co-sponsors CAIR-CA, the Western Center on Law and Poverty, and CHIRLA:

In light of the disproportionate impact of the COVID-19 pandemic, we must ensure the rights of the most marginalized are met. Moreover, because of the economic impact COVID-19 has had on the nonprofit sector, nonprofits and community-based organizations face having to increase their services and community support under economic stress and may find it difficult to fulfill the role of overseeing the status of human rights.

AB 412 would be a step in the right direction in ensuring the human rights of all Californians are met and would illustrate California's commitment to ensuring human rights to all. This bill would establish a much-needed and long-awaited government entity that can identify human rights abuses and concerns, develop policy recommendations to mitigate their concerns, and advocate for their implementation.

4. Arguments in opposition

According to bill opponent Israeli-American Civic Action Network:

While evaluating and ensuring the protection of human rights is a laudable goal, the reference in Assembly Bill 412 under section (c) to the United Nations Universal Declaration of Human Rights and (d) to "other critical human rights documents that the commission sees fit" is problematic.

In practice, the United Nations Universal Declaration of Human Rights, and the United Nations Human Rights Council – ostensibly the UN body meant to promote and protect the principles in the Declaration – has not lived up to its stated purpose especially in regards to Israel, the homeland of over 250,000 Californians of Israeli descent. Israel has been inappropriately condemned by the United Nations Human Rights Council more than all other countries combined...

California should not seek to emulate the UNHRC in any form. As such, we request that AB 412 be amended to remove section 8275 (c) and (d) and properly limit the defined scope of “human rights” to the California Constitution and the United States Constitution for the proposed California Commission on Human Rights.

SUPPORT

Council on American-Islamic Relations – California (CAIR-CA) (co-sponsor)

Coalition for Humane Immigrant Rights (co-sponsor)

Western Center on Law and Poverty (co-sponsor)

California Federation of Teachers

National Association of Social Workers, California Chapter

The Arc and United Cerebral Palsy California Collaboration

OPPOSITION

Israeli-American Civil Action Network

RELATED LEGISLATION

Pending Legislation:

SB 693 (Stern, 2021) establishes the Governor’s Council on Genocide and Holocaust Education to, among other things, establish best practices for, and promote implementation of, education on genocide, including the Holocaust, and submit an annual report to the Legislature, as specified. SB 693 is pending before the Assembly Appropriations Committee.

SB 17 (Pan, 2021) establishes the Office of Racial Equity, led by the Racial Equity Advisory and Accountability Council, which will coordinate with state agencies and departments to ensure that state policies advance racial equity. SB 17 is pending before the Assembly Appropriations Committee.

AB 1126 (Bloom, 2021) establishes the Commission on the State of Hate, which will provide resources to various state agencies and the public to inform them on the state of hate and advise the Legislature, the Governor, and state agencies on policy recommendations to promote intersocial education designed to foster mutual respect and understanding among California’s diverse population. AB 1126 is pending before the Senate Judiciary Committee and will be heard on the same day as this bill.

AB 1007 (Carrillo, 2021) establishes the Forced or Involuntary Sterilization Compensation Program, to be administered by the California Victim Compensation Board, for the purpose of providing victim compensation to survivors of state-

sponsored sterilization conducted pursuant to eugenics laws that existed in California between 1909 and 1979 and to survivors of coercive sterilization performed in prisons after 1979. AB 1007 is pending before the Senate Judiciary Committee.

Prior Legislation:

AB 3121 (Weber, Ch. 319, Stats. 2020) established the Task Force to Study and Develop Reparation Proposals for African Americans, with a Special Consideration for African Americans Who are Descendants of Persons Enslaved in the United States, which will, among other things, identify, compile, and synthesize the relevant corpus of evidentiary documentation of the institution of slavery that existed within the United States and the colonies; and develop recommendations for how California should compensate African Americans and, in particular, descendants of slaves.

AB 3052 (Carrillo, 2020) would have established the Forced or Involuntary Sterilization Compensation Program, to be administered by the California Victim Compensation Board for the purpose of providing victim compensation to survivors of state-sponsored sterilization conducted pursuant to eugenics laws that existed in California between 1909 and 1979 and to survivors of coercive sterilization performed in prisons after 1979. AB 3052 died in the Assembly Appropriations Committee.

AB 2487 (Reyes, 2020) was substantially similar to this bill and would have established the California Commission on Human Rights. AB 2487 was held in the Assembly Accountability and Administrative Review Committee due to COVID-19-related bill limitations.

AB 1764 (Carrillo, 2019) would have established the Forced or Involuntary Sterilization Compensation Program, to be administered by the California Victim Compensation Board for the purpose of providing victim compensation to survivors of state-sponsored sterilization conducted pursuant to eugenics laws that existed in California between 1909 and 1979 and to survivors of coercive sterilization performed in prisons after 1979. AB 1764 died in the Assembly Appropriations Committee.

SB 1190 (Skinner, 2018) would have established the Eugenics Sterilization Compensation Program, to be implemented by the California Victim Compensation Board for the purpose of providing victim compensation to any survivor of state-sponsored sterilization conducted pursuant to eugenics laws that existed in the State of California between 1909 and 1979. SB 1190 died in the Assembly Appropriations Committee.

SB 1150 (Jackson, 2018) would have required all state agencies, in consultation with the Commission on the Status of Women and Girls, to conduct an evaluation of their own departments to ensure that the state does not discriminate against women through the

allocation of funding and the delivery of services. SB 1150 died in the Senate Appropriations Committee.

PRIOR VOTES:

Senate Governmental Organizations Committee (Ayes 10, Noes 4)

Assembly Floor (Ayes 70, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 1)

Assembly Accountability and Administrative Review Committee (Ayes 7, Noes 0)
