

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

AB 1577 (Committee on Judiciary)

Version: March 8, 2021

Hearing Date: June 29, 2021

Fiscal: Yes

Urgency: Yes

ME

SUBJECT

Commission on Judicial Performance

DIGEST

This bill requires the Commission on Judicial Performance (CJP) to take all reasonable steps to determine the existence or extent of alleged judicial misconduct in order to protect the public, enforce rigorous standards of judicial conduct, and maintain public confidence in the integrity and independence of the judicial system. The bill also establishes a committee consisting of 15 members to study and make recommendations for changes in the operations and structure of the CJP, as specified, and requires the report of recommendations to be completed no later than March 30, 2023. This bill declares it is to take effect immediately as an urgency statute and makes various nonsubstantive changes.

EXECUTIVE SUMMARY

The CJP is responsible for investigating complaints regarding judicial misconduct and disciplining judges who engage in misconduct. Concerns have been raised over the years relating to the transparency and accountability of the CJP in regard to disciplining judges. In 2016, the Legislature requested an audit of the CJP that found various shortcomings and issues with the CJP's current discipline system. This bill seeks to provide a process for which changes to the structure and function of the CJP can be comprehensively reviewed in a transparent manner by establishing the Committee to Review the Operations and Structure of the Commission on Judicial Performance (Committee) to study and evaluate the CJP and provide a public report on the Committee's findings and recommendations. The Committee would be comprised of 15 individuals, as specified in the bill. The bill also specifically requires the CJP to take all reasonable steps to determine the existence or extent of alleged judicial misconduct in order to protect the public, enforce rigorous standards of judicial conduct, and maintain public confidence in the integrity and independence of the judicial system

This bill is author sponsored. Support is from Child Empowerment and Safety California, Protective Parents Association, California Women's Law Center, Center for Judicial Excellence, and the Legislative Coalition to Prevent Child Abuse. There is no opposition to the bill.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes that the Commission on Judicial Performance (CJP) which includes: one judge of a court of appeal appointed by the Supreme Court; two judges of superior courts appointed by the Supreme Court; two members of the State Bar of California who have practiced law in this State for 10 years who are appointed by the Governor; and six Commissioners who are not judges, retired judges, or members of the State Bar of California. The latter six Commissioners are appointed as follows: two are appointed by the Governor; two are appointed by the Senate Committee on Rules; and two are appointed by the Speaker of the Assembly. (Cal. Const. Art. VI, Sec. 8 (a).)
- 2) Provides that the CJP may disqualify a judge from acting as a judge, without loss of salary, upon notice of formal proceedings by the CJP charging the judge with judicial misconduct or disability. (Cal. Const. Art. VI, Sec. 18 (b).)
- 3) Requires the CJP to suspend a judge from office without salary when in the United States the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. (Cal. Const. Art. VI, Sec. 18 (c).)
- 4) Authorizes the CJP to exercise discretionary jurisdiction with regard to the oversight and discipline of subordinate judicial officers. (Cal. Const. Art. VI, Sec. 18.1 (a).)

This bill:

- 1) Requires the CJP to take all reasonable steps to determine the existence or extent of alleged judicial misconduct in order to protect the public, to enforce rigorous standards of judicial conduct, and maintain public confidence in the integrity and independence of the judicial system.
- 2) Establishes the Committee to Review the Operations and Structure of the Commission on Judicial Performance (Committee) consisting of 15 members who shall be: the director of the commission; the chair of the commission; a current or former public member of the commission; the legal adviser to the commission; two public members appointed by the Senate Committee on Rules; two public members appointed by the Speaker of the Assembly; and seven members appointed by the Governor who shall include two active judges, three members of the public, one

director of a judicial conduct commission from another state that is similar in size to the State of California, and one law professor or other person who is recognized as an expert in judicial ethics, who may be an active or retired attorney or judge.

- 3) Requires the Committee to study and make recommendations for changes in the operations and structure of the CJP that would improve CJP's ability to carry out its mission to protect the public, enforce rigorous standards of judicial conduct, and maintain public confidence in the integrity and independence of the judiciary.
- 4) Requires the Committee, as part of its study to, at a minimum, do all of the following:
 - a) Review and consider the following:
 - i. all findings and recommendations of the California State Auditor in Audit 2016-137;
 - ii. the existing structure and operations of the CJP; and
 - iii. the existing structure and operations of judicial discipline commissions of other states that are similar in size to the State of California.
 - b) Hold at least two hearings to accept comments from the public about possible changes in the operations and structure of the CJP that would improve the CJP's ability to carry out its mission to protect the public, enforce rigorous standards of judicial conduct, and maintain public confidence in the integrity and independence of the judiciary.
 - i. One hearing is to be held prior to the Committee completing its study or formulating its tentative recommendations to allow the Committee to accept the public's suggestions for possible changes in the operations and structure of the CJP.
 - ii. One hearing is to be held after completing the Committee's study and formulating its tentative recommendations for possible changes in the operations and structure of the CJP but prior to completing its study to allow the Committee to accept the public's comments about its tentative recommendations. The Committee must provide the public with notice of its tentative recommendations in advance of this hearing, as specified.
 - iii. All hearings are required to comply with the Bagley-Keene Open Meeting Act.
 - c) Study and make recommendations whether any of the following should be changed in order to improve the CJP's ability to carry out its mission to protect the public, enforce rigorous standards of judicial conduct, and maintain public confidence in the integrity and independence of the judiciary:
 - i. the number of commission members of the CJP;
 - ii. the allocation of appointments to the CJP among the appointing authorities;
 - iii. the structure of the CJP;

- iv. the appropriate discipline and remedies available to the CJP when it imposes discipline;
 - v. the policies and procedures governing the CJP's operations;
 - vi. whether the CJP currently has adequate financial and personnel resources;
 - vii. what, if any, specific funding is necessary to support any recommended improvements to the CJP; and
 - viii. whether changes to the Constitution and statutes of the State of California, Rules of Court, and rules of CJP are needed.
- d) Seek input on its study from all of the following:
- i. all three branches of government;
 - ii. judges;
 - iii. attorneys admitted to the State Bar of California;
 - iv. members of the CJP; and
 - v. the public.
- 5) Requires the Committee to complete its study and provide a written report about its findings and recommendations no later than March, 30, 2023, to all of the following:
- a) the Governor;
 - b) the CJP;
 - c) the Supreme Court of California;
 - d) the President pro Tempore of the Senate and the Chair of the Senate Committee on Judiciary;
 - e) the Speaker of the Assembly and the Chair of the Assembly Committee on Judiciary; and
 - f) the public, including by providing the report to the CJP so that the CJP may make the report available on its website.
- 6) Makes various nonsubstantive, technical changes.
- 7) Declares it is to take effect immediately as an urgency statute and makes findings to that effect.

COMMENTS

1. Stated need for the bill

The Assembly Judiciary Committee, as the author of this bill, writes:

The public and policy makers rely upon the Judicial Branch of government to fairly administer the laws and manage operation of the courts. It is imperative that the public trust judicial officers and the court system in general. The recent audit of CJP discovered structural and procedural weaknesses. These problems

should be addressed in a comprehensive and holistic manner by a group of experts in judicial ethics, rather than in a piecemeal fashion.

2. Background on the CJP

The CJP was established in 1960 by an amendment to the California Constitution and is responsible for investigating complaints of judicial misconduct and disciplining judges who are found to have engaged in misconduct. Generally, misconduct is related to a violation of the Code of Judicial Ethics. The CJP has jurisdiction over the judges of the superior courts, the justices of the courts of appeal, the justices of the Supreme Court of California, subordinate judicial officers, and in some circumstances former judges. The mission of the CJP is to “protect the public, enforce rigorous standards of judicial conduct and maintain public confidence in the integrity and independence of the judicial system.”¹ It is comprised of 11 commissioners – six public members who are not judges, retired judges, or licensees of the California State Bar, one judge of a court of appeal, two judges of the superior courts, and two licensees of the California State Bar. To file a complaint, a complainant must send a letter or a specified form to the CJP by mail or fax (if the complaint is under 10 pages) – no electronic filing is authorized and phone complaints are not accepted. The CJP has no authority to change a decision or ruling made by a judge, it can only investigate complaints and impose discipline if appropriate. A complainant is notified in writing once a final decision is reached by the CJP; however, unless public discipline has been issued, the complainant will receive notice that either the matter has been closed or that appropriate corrective action has been taken but what action was taken will not be disclosed.

3. Concerns regarding the CJP

Over the years changes have been made to the CJP in response to concerns regarding the lack of transparency and accountability of the CJP. In 1988, voters passed Proposition 92 (Nov. 8, 1988, gen. elec.) to impose term limits on commissioners of the CJP and allow judges the opportunity to request formal proceedings be held in public. This proposition also authorized the CJP to issue a public reprimand of a judge without obtaining the review of the California Supreme Court. Just six years later in 1994, further reforms were made to the CJP by Proposition 190 (Nov. 8, 1995, gen. elec.). This proposition altered the way the CJP disciplined judges by, among other things, requiring the charges and documentation of formal disciplinary proceedings against a judge to be made public and increased the number of public commissioners so that they constitute a majority. The Los Angeles Times described the CJP process at that time as “demonstrably clubby, secretive and ineffective at disciplining errant or incompetent

¹ Comm. On Judicial Performance, available at <https://cjp.ca.gov/> (as of June 20, 2021).

judges” and noted that though the CJP can decide to hold public hearings it “almost never decides to do so[.]”²

Concerns regarding the disciplinary process of the CJP persisted even after the changes adopted in the above described propositions. In 2016, the Legislature requested an audit of the CJP by the California State Auditor (Auditor) for the first time in the CJP’s existence. The Auditor released its findings in April of 2019 after prolonged conflict between the CJP and the Auditor regarding the authority of the Auditor to review the discipline records of the CJP. This conflict resulted in a lawsuit by the CJP against the Auditor, which was settled in September of 2018. The Auditor’s executive summary found that the “CJP has missed opportunities to fully investigate allegations of misconduct, has a structure and processes for discipline that do not align with best practices and falls short of the intent of the voters, and has failed to ensure it is sufficiently transparent and accessible to the public.”³ The Auditor noted in its audit of the CJP that a “strong judicial oversight agency is essential to maintain a fair and impartial judiciary that limits the potential for judges to abuse or misuse their power.”⁴

This bill seeks to ensure that the CJP is a robust oversight agency and that California maintains a fair and impartial judiciary by: (a) specifically requiring the CJP to take all reasonable steps to determine the existence or extent of alleged judicial misconduct in order to protect the public, enforce rigorous standards of judicial conduct, and maintain public confidence in the integrity and independence of the judicial system, and (b) establishing the Committee to study the CJP and evaluate its operations. The Committee, which will consist of 15 members, is required to evaluate various aspects of the CJP including: the number of commissioners and the allocation of appointments to the CJP among the appointing authorities; the existing structure of the CJP; the appropriate discipline and remedies available to the CJP when it imposes discipline; policies and procedures governing the CJP’s operations; whether the CJP has adequate resources to accomplish its mission and any changes that the Committee recommends; and specific funding necessary to support any recommended changes. The Committee is also required to review and consider all the findings and recommendations in the Auditor’s report. In order to ensure transparency, the Committee must hold at least two public hearings and is required to seek input from all three branches of government, judges, licensees of the California State Bar, members of the CJP, and the public. The study and report of the Committee is to be completed by March 30, 2023. By establishing the Committee, this bill provides a deliberate, comprehensive, and transparent approach to reforming the CJP.

SUPPORT

² 190 and 191 ‘Yes’ on Judicial Reform, L.A. Times (Oct. 10, 1994) available at <https://www.latimes.com/archives/la-xpm-1994-10-10-me-48593-story.html> (as of June 20, 2021).

³ Ca. Auditor Rep. 2016-137 (Apr. 2019) p. 1, available at <https://www.auditor.ca.gov/reports/2016-137/index.html> (as of June 20, 2021).

⁴ *Ibid.*

Advocates for Child Empowerment and Safety
California Protective Parents Association
California Women's Law Center
Center for Judicial Excellence
Legislative Coalition to Prevent Child Abuse

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 3363 (Committee on Judiciary, 2019-20) was virtually identical to this bill. AB 3363 was not heard by the Senate Judiciary Committee due to the COVID-19 pandemic.

PRIOR VOTES:

Assembly Floor (Ayes 77, Noes 0)
Assembly Appropriations Committee (Ayes 14, Noes 0)
Assembly Judiciary Committee (Ayes 11, Noes 0)
