

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

SB 1356 (Wahab)
Version: April 10, 2024
Hearing Date: April 16, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

Judiciary: training: gender bias

DIGEST

This bill specifies that the Judicial Council is required to consider the role of gender in court proceedings in developing any training on gender bias, including strategies to counter stereotypes, taking into account inequities in power and their intersection with gender, and meeting the needs of litigants in unique situations of vulnerability.

EXECUTIVE SUMMARY

Existing law authorizes the Judicial Council to develop training on implicit bias with respect to specified characteristics, including gender. The California Rules of Court require each justice, judge, and subordinate judicial officer to regularly participate in education on fairness and access relating to: race and ethnicity; gender; sexual orientation; persons with disabilities; persons with limited economic means; and persons without stable housing. (Cal. Rules of Ct. 10.469(e).) The Rules further specify that each justice, judge, and subordinate judicial officer must participate in education on unconscious bias, as well as the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct at least once every three-years. (*Ibid.*) This bill seeks to supplement this training by specifying that the training should consider issues around the role of gender in court proceedings, including strategies to counter stereotypes, the intersection of gender and power dynamics, and the needs of litigants in unique situations of vulnerability. This bill is author sponsored and supported by the California Partnership to End Domestic Violence and the Consumer Attorneys of California. The Committee did not receive any timely opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that no person in the state is to be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state on the basis of sex, race, color, religion, ancestry, national origin, ethnic group, identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation. (Gov. Code § 11135.)
- 2) Requires the California Supreme Court to make rules for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns; and specifies that these rules shall be referred to as the Code of Judicial Ethics. (Cal. Const. art. VI, § 18 (m).)
- 3) Authorizes the Judicial Council to provide by rule of court for racial, ethnic, gender bias, and sexual harassment training for judges, commissioners, and referees. (Gov. Code § 68088.)
- 4) Authorizes the Judicial Council to develop training on implicit bias with respect to the characteristics listed in Section 11135 of the Government Code¹, and authorizes the Judicial Council to adopt a rule of court, effective January 1, 2021, to implement these provisions.
 - a) Requires all court staff who are required, as part of their regular job duties, to interact with the public on matters before the court to complete two hours of any training program developed by the Judicial Council on implicit bias every two years as of January 1, 2022. (Gov. Code § 68088.)
- 5) Requires the training in 4), above, to include, but not be limited to, all of the following:
 - a) A survey of the social science on implicit bias, unconscious bias, and systemic implicit bias, including the ways that bias affects institutional policies and practices.
 - b) A discussion of the historical reasons for, and the present consequences of, the implicit biases that people hold based on the specified characteristics.
 - c) Examples of how implicit bias affects the perceptions, judgments, and actions of judges, subordinate judicial officers, and other court staff, and how those perceptions, judgments, and actions result in unacceptable disparities in access to justice.
 - d) The administration of implicit association tests to increase awareness of one's unconscious biases based on the specified characteristics.

¹ The characteristics are sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation. (Gov. Code § 11135.)

- e) Strategies for how to reduce the impact of implicit bias on parties before the court, members of the public, and court staff.
 - f) Inquiry into how judges and subordinate judicial offices can counteract the effects of juror implicit bias on the outcome of cases.
- 6) Requires the Judicial Council to establish training programs for individuals who perform duties in domestic violence or child custody matters, including, but not limited to, judicial officers, referees, commissioners, and if employed by the court, guardians ad litem, custody evaluators, mediators, and child custody recommending counselors, and others who are deemed appropriate by the Judicial Council.
- a) The training program is to be an ongoing training and education program designed to improve the ability of courts to recognize and respond to child physical abuse, child sexual abuse, domestic violence, and trauma in family victims, particularly children, and to make appropriate custody decisions that prioritize child safety and well-being and are culturally sensitive and appropriate for diverse communities.
 - b) The training program is to include a domestic violence session in any orientation session conducted for newly appointed or elected judges, an annual training session in domestic violence, and periodic updates in all aspects of domestic violence. (Gov. Code § 68555; Cal. Rules of Court, Rule 10.464.)

This bill:

- 1) Specifies, in regards to the training described in 4) and 5) above, that the Judicial Council is required to consider the role of gender in court proceedings in developing any training on gender bias, including strategies to counter stereotypes, taking into account inequities in power and their intersection with gender, and meeting the needs of litigants in unique situations of vulnerability.
- 2) Makes various legislative findings and declarations including, among others,:
 - a) there is an intersection between gender-based discrimination or gender-based violence and the rule of law;
 - b) to ensure individuals have effective access to justice, courts have an have a responsibility to account for how power and gender relations may influence cases, including, but not limited to, assessing the risk to the victim, respect for the human rights of individuals, and countering discrimination and bias; and
 - c) to ensure equity in the justice system, the judiciary should receive training related to the role of gender in court proceedings, including the elimination of stereotypes, assessing inequities in power, and meeting the needs of groups in unique situations of vulnerability.

COMMENTS

1. Stated need for the bill

The author writes:

Previously enacted laws regarding judicial trainings and criminal legal system reforms have created positive change in the landscape for women interacting with our justice system and incarcerated women. However, we can – and should – do better. The 2023 From Crisis to Care Report notes “43% of respondents reported that intimate partner violence played a role in their criminalization and/or incarceration, with several respondents noting the trauma of their own childhood abuse or witnessing abuse of their own children were factors.” That these extenuating circumstances are not appropriately accounted for when assessing a case means that women who are victimized by the violence of their partners or caregivers are further victimized by our legal system.

According to this same report, Black women make up 25% of the prison population while being only 6.5% of the general population of California. One of the most well-known examples of employment discrimination that intersects with gender is the persistent wage gap between men and women, where the median salary for women in 2022 was \$52,360, while the median salary for men in 2022 was \$62,350. Asian women earn \$0.89 for every dollar paid to white, non-Hispanic men. An even deeper analysis reveals that the wage gap for Black, Latina, and Native American women is under \$0.66 for every dollar white, non-Hispanic men make. As of 2019, more women were earning college degrees than men, yet the wage gap has not substantively improved as a result.

These are just a few ways systemic discrimination towards women – as well as gender non-conforming and LGBTQ people – manifests. As our state becomes more diverse, we must also ensure our judicial system understands the nuances of women’s rights across varying cultures and the underlying fears regarding femicide. For all our efforts to improve and reform our systems, we are still failing Black women and women of color; we must do better. By incorporating a gender perspective into our judicial processes we can advance greater systemic change, fetter out the biases that remain in our legal system, and ensure an equitable application of the law. In doing so, we can more effectively use existing programming, better allocate resources and supportive services, and improve judicial outcomes to ensure women receive equitable treatment and justice under the law.

2. Implicit bias, gender, and the judicial branch

The judiciary plays a vital role in our democracy. It is imperative that the judiciary ensure that all people interacting with the courts are treated fairly and impartially and are not discriminated against, whether explicitly or implicitly, based on protected

characteristics such as race, gender, national origin, or sexual orientation. This belief is evidenced in the Preamble to the California Code of Judicial Ethics, which states:

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to this code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and must strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and is a highly visible member of government under the rule of law.

In order to ameliorate the effects of implicit bias, individuals have to recognize their own implicit biases. An article in the UCLA Law Review investigating the issue of implicit bias in the courtroom found:

Most judges view themselves as objective and especially talented at fair decisionmaking. For instance, Rachlinski et al. found in one survey that 97 percent of judges (thirty-five out of thirty-six) believed that they were in the top quartile in “avoid[ing] racial prejudice in decisionmaking”² relative to other judges attending the same conference. That is, obviously, mathematically impossible. . . In another survey, 97.2 percent of those administrative agency judges surveyed put themselves in the top half in terms of avoiding bias, again impossible.³ Unfortunately, there is evidence that believing ourselves to be objective puts us at particular risk for behaving in ways that belie our self-conception.⁴

This bill augments existing training requirements for judicial officers by requiring Judicial Council to consider the role of gender in court proceedings when developing any training on gender bias, including strategies to counter stereotypes, taking into account inequities in power and their intersection with gender, and meeting the needs of litigants in unique situations of vulnerability. The author points to several studies for the need for this bill. One study is entitled, *Steps for judging with a gender perspective in electoral matters* from the Gender Equality Observatory of the Global Network on Electoral Justice, which seeks to establish a framework for judges making determinations regarding the political and electoral rights of women that “enables an empathetic vision to detect scenarios of discrimination and subordination, derived from the reproduction of roles and stereotypes” with the goal of achieving equality and protection of human rights.⁵ Another is, *Women Deprived of Liberty in the Americas* from

² Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 Notre Dame L. Rev. 1195, 1225 (2009).

³ Chris Guthrie, Jeffrey J. Rachlinski & Andrew J. Wistrich, *The “Hidden Judiciary”*: An Empirical Examination of Executive Branch Justice, 58 Duke L.J. 1477, 1519 (2009).

⁴ Kang Jerry, et. al. *Implicit Bias in the Courtroom*, 59 UCLA L. Rev. 1124, 1172-73 (2012).

⁵ Revel et. al., *Steps for judging with a gender perspective in electoral matters*, Gender Equality Observatory of the Global Network on Electoral Justice, (Oct. 2022), https://lac.unwomen.org/sites/default/files/2023-10/eng_4_pasos_para_juzgar_con_perspectiva_de_genero_en_materia_electoral_2022_compressed.pdf.

the Inter-American Commission on Human Rights, which argues that governments should take all “measures necessary to eradicate gender stereotypes in processes in the administration of criminal justice.”⁶

3. Statements in support

The California Partnership to End Domestic Violence writes in support stating:

Judges and those working across our court system should receive training related to the role of gender in court proceedings, including the elimination of stereotypes, assessing inequities in power, and meeting the needs of groups in unique situations of vulnerability. While training regarding domestic violence is covered under existing law, and training on gender bias exists, there are still gender discrepancies in judicial decisions.

SB 1356 would require 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.

SUPPORT

California Partnership to End Domestic Violence
Consumer Attorneys of California

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: AB 242 (Kamlager-Dove, Ch. 418, Stats. 2019) authorized the Judicial Council to develop training on implicit bias with respect to sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, as provided.

⁶ *Women Deprived of Liberty in the Americas*, Inter-American Commission on Human Rights, (mar. 8, 2023), https://www.oas.org/en/iachr/reports/pdfs/2023/Informe-Mujeres-privadas-libertad_ENG.pdf at p. 156.