
THIRD READING

Bill No: SB 836
Author: Wiener (D)
Amended: 2/18/22
Vote: 27 - Urgency

SENATE PUBLIC SAFETY COMMITTEE: 4-0, 3/8/22
AYES: Bradford, Kamlager, Skinner, Wiener
NO VOTE RECORDED: Ochoa Bogh

SENATE JUDICIARY COMMITTEE: 9-0, 3/29/22
AYES: Umberg, Durazo, Gonzalez, Hertzberg, Laird, McGuire, Stern,
Wieckowski, Wiener
NO VOTE RECORDED: Borgeas, Jones

SUBJECT: Evidence: immigration status

SOURCE: California Employment Lawyers Association
Coalition for Humane Immigrant Rights
Legal Aid at Work
Los Angeles County District Attorney's Office
San Francisco District Attorney's Office

DIGEST: This bill reenacts provisions of law that prohibited the disclosure of a person's immigration status in open court unless the judge determines in an in camera hearing that the evidence is admissible.

ANALYSIS:

Existing law:

- 1) States that only relevant evidence is admissible, and except as otherwise provided by statute, all relevant evidence is admissible. (Evid. Code, §§ 350, 351.)

- 2) Provides that relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post-conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court, subject to the existing statutory role of evidence relating to privilege or hearsay, or inadmissibility. (Cal. Const., art. I, § 28, as adopted June 8, 1982.)
- 3) Defines “relevant evidence” means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evid. Code, § 210.)
- 4) Authorizes a court in its discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. (Evid. Code, § 352.)
- 5) Allows the credibility of a witness to be attacked or supported by any party including the party calling him. (Evid. Code, § 785.)
- 6) Provides for the following procedure if evidence of sexual conduct of the complaining witness is offered to attack the credibility of the complaining witness in specified sex offense cases:
 - a) A written motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness.
 - b) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated. The affidavit shall be filed under seal and only unsealed by the court to determine if the offer of proof is sufficient to order a hearing as provided below. After that determination, the affidavit shall be resealed by the court.
 - c) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at the hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant.

- d) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant, and is not inadmissible, the court may make an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the court order.
 - e) An affidavit resealed by the court shall remain sealed, unless the defendant raises an issue on appeal or collateral review relating to the offer of proof in the sealed document, as provided. (Evid. Code, § 782, subd. (a).)
- 7) Provides that in a civil action for personal injury or wrongful death, evidence of a person's immigration status shall not be admitted into evidence, nor shall discovery into a person's immigration status be permitted. (Evid. Code, § 351.2.)
- 8) Provided that, until January 1, 2022, in a civil action not governed by Evidence Code Section 351.2, evidence of a person's immigration status shall not be disclosed in open court by a party or his or her attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing requested by the party seeking disclosure of the person's immigration status. (Evid. Code, §351.3, subd. (a), repealed Jan. 1, 2022.)
- 9) Specified that, until January 1, 2022, the prohibition against disclosing a person's immigration status in civil actions does not:
- a) Apply to cases in which a person's immigration status is necessary to prove an element of a claim or an affirmative defense;
 - b) Impact otherwise applicable laws governing the relevance of immigration status to liability or the standards applicable to inquiries regarding immigration status in discovery or proceedings in a civil action, as provided; or,
 - c) Prohibit a person or his or her attorney from voluntarily revealing his or her immigration status to the court. (Evid. Code, §351.3, subd. (b), repealed Jan. 1, 2022.)
- 10) Provided that, until January 1, 2022, on a criminal action, evidence of a person's immigration status shall not be disclosed in open court by a party or his or her attorney unless the judge presiding over the matter first determines

that the evidence is admissible in an in camera hearing requested by the party seeking disclosure of the person's immigration status. (Evid. Code, § 351.4, subd. (a), repealed Jan. 1, 2022.)

- 11) Specified that, until January 1, 2022, the prohibition against disclosing a person's immigration status in criminal actions does not:
 - a) Apply to cases in which a person's immigration status is necessary to prove an element of an offense or an affirmative defense;
 - b) Limit discovery in a criminal action; or,
 - c) Prohibit a person or his or her attorney from voluntarily revealing his or her immigration status to the court. (Evid. Code, § 351.4, subd. (b).)

This bill:

- 1) Reenacts prior law that provided that in a civil action not governed by Evidence Code Section 351.2, evidence of a person's immigration status shall not be disclosed in open court by a party or his or her attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing requested by the party seeking disclosure of the person's immigration status.
- 2) Reenacts prior law that provided that on a criminal action, evidence of a person's immigration status shall not be disclosed in open court by a party or his or her attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing requested by the party seeking disclosure of the person's immigration status.
- 3) Includes the same intent language contained in prior law regarding not altering a prosecutor's existing obligation to disclose exculpatory evidence.
- 4) Contains an urgency clause.

Comments

According to the author of this bill:

Senate Bill 836 removes the sunset date on Senate Bill 785, which protected a person's immigration status in a public court record, unless the presiding judge determined that immigration status was

relevant information. Senate Bill 785 (Wiener, Chapter 12, Statutes of 2018) was enacted to keep immigration status private in public court records, but it expired on January 1, 2022. SB 836 ensures that public courts continue to protect a person's immigration status.

SB 785 prohibited the inclusion of evidence of a person's immigration status in a public court record -- unless the party seeking its inclusion obtained a ruling by the presiding judge at an in-camera hearing that the evidence was relevant -- until January 1, 2022. SB 785 guaranteed a procedural requirement that protected a person's immigration status from being exposed in open court prior to review by the presiding judge. Immigration status was only considered admissible evidence when a judge ruled it to be so at an in camera hearing. Only then could it be part of public court records. SB 785 did not prohibit an individual from voluntarily revealing their own immigration status in court. The protections established by SB 785 also applied to both civil and criminal cases.

In March 2017, California Chief Supreme Court Justice Tani Cantil-Sakauye sent a letter to U.S. Former Attorney General Jeff Sessions and Former Homeland Security Secretary John Kelly expressing concern over reports of immigration agents stalking undocumented immigrants in California courthouses. Chief Justice Cantil-Sakauye said, "Our courthouses serve as a vital forum for ensuring access to justice and protecting public safety. Courthouses should not be used as bait in the necessary enforcement of our country's immigration laws."

Prior to SB 785 becoming law, there were numerous documented examples of defense attorneys exposing the immigration status of witnesses and victims of crimes in California courthouses. In addition, there were reports of immigration agents throughout the country monitoring and detaining individuals at courthouses.

The protections guaranteed by SB 785 ended on January 1, 2022. Many immigrants continue to feel apprehension in court settings for fear of being targeted and arrested by Immigration and Customs Enforcement (ICE) agents. Every day that passes without these protections puts immigrants at risk.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 3/30/22)

California Employment Lawyers Association (co-source)
Coalition for Humane Immigrant Rights (co-source)
Legal Aid at Work (co-source)
Los Angeles County District Attorney's Office (co-source)
San Francisco District Attorney's Office (co-source)
Asian Americans Advancing Justice – California
California for Safety and Justice
California Partnership to End Domestic Violence
California Rural Legal Assistance Foundation, Inc.
Center for Workers' Rights
Centro Legal De LA Raza
Disability Rights California
Ella Baker Center for Human Rights
Equal Rights Advocates
Friends Committee on Legislation of California
LA Raza Centro Legal
Oakland Privacy
PICO California
Prosecutors Alliance of California
San Diego County District Attorney's Office
UC Hastings Community Justice Clinics
Warehouse Worker Resource Center

OPPOSITION: (Verified 3/30/22)

None received

Prepared by: Stella Choe / PUB. S. /
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