

employers to develop procedures to ensure the confidentiality and protection from unauthorized use and disclosure of employees' medical information, to obtain written authorizations before the release of such information, and to limit internal use of such information or the fact that such information was withheld by the employee.

Disclosures regarding job performance may be conditionally privileged and non-actionable if made to others within the company for legitimate business reasons or to other potential employers concerning past performance and qualifications, in good faith, without malice, and if the contents of the disclosures are true.

REPORT, page 249.

Under the California Labor Code, questions regarding or use of information relative to employee or applicant arrest records must be limited to cases resulting in conviction. Violation of these provisions of the Labor Code gives rise to civil and criminal liability. Similarly, public agencies may not require an applicant for any license, certificate, or registration, to reveal a record of arrest that did not result in a conviction.

Labor Code Section 432.7.

A. USE OF POLYGRAPHS

One major problem that surfaced several times during the Public Hearings pertains to the use of polygraph testing of employees or applicants for employment. The Labor Code's ban on such testing exempts the federal government and any agency thereof and the state government and any agency or local subdivision thereof, including, but not limited to, counties, cities, districts, authorities, and agencies.

REPORT, pages 250-254.

Labor Code Section 432.2; Business and Professions Code Section 461.

The Government Code states that police officers may not be required to submit to polygraph examinations in departmental investigations or otherwise. The statute does not prohibit the use of polygraph tests for applicants for employment with law enforcement agencies.

Gov. Code Section 3307.

Based upon its study of the problem, the Commission finds that current law falls adequately to protect employees from serious privacy invasions caused by the use of polygraph tests. Polygraph testing is one of the most intrusive procedures that has come to the attention of the Commission.

REPORT, page 253.

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* THE COMMISSION RECOMMENDS that Government Code Section 3307, which prohibits law enforcement agencies from requiring peace officers to submit to polygraph tests, be amended to protect applicants for peace officer positions from being required to take such

REPORT, page 253.

"LIMITS ON USE OF POLYGRAPHS IN EMPLOYMENT"

* tests. Furthermore, if peace officer applicants are
 * requested to take such tests, the law should mandate
 * that personnel officials inform applicants of their
 * right to refuse to submit to polygraph testing.
 * There should be no effect on applicant status for
 * refusal to consent to polygraph testing.

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* THE COMMISSION FURTHER RECOMMENDS that Section 432.2
 * of the California Labor Code be amended. Presently,
 * this statute exempts state and local government em-
 * ployers from its provisions. Section 432.2 prohibits
 * employers from requiring or demanding that applicants
 * or employees submit to polygraph testing as a condi-
 * tion of employment or continued employment. The
 * blanket exemption of governmental employers from this
 * provision should be eliminated. The only exempt
 * positions should be those requiring top security
 * clearances.

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REPORT, page 253.

* FINALLY, THE COMMISSION RECOMMENDS that if any appli-
 * cant or employee voluntarily submits to polygraph
 * testing, the law should prohibit questioning in cer-
 * tain highly intimate and private areas including:
 * religious, labor, sexual, or political activities and
 * associations. Violation of this prohibition should
 * carry criminal penalties, civil recovery of actual
 * damages or \$1,000, whichever is greater, and reason-
 * able attorney fees and costs to any employee who
 * prevails in any litigation arising under this stat-
 * ute.

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REPORT, page 254.

After being adopted into law and in effect for a few
 years, if these recommendations do not appear to have
 solved the problem of abusive polygraph practices, the
 Legislature should consider prohibiting the use of poly-
 graph testing under any conditions in employment set-
 tings.

B. LAW ENFORCEMENT

Historically, some of the greatest resistance to
 equal employment opportunities for lesbians and gay men
 has come from law enforcement employers. The Commission
 staff has reviewed the employment practices and policies
 of a few local law enforcement agencies in California.
 While the Chief of Police in San Francisco, both within
 his department and publicly, has encouraged lesbians and
 gay men who are currently employed as officers to feel
 free to acknowledge their status without fear of
 repercussions, such has not been the policy in Los
 Angeles.

REPORT, page 414.

 *
 * THE COMMISSION RECOMMENDS that all police, sheriff,
 * and fire departments throughout the state follow the
 * San Francisco precedent and officially make a public
 * statement to members of these departments that there
 * will be no repercussions if an employee's sexual
 * orientation becomes known.
 *

REPORT, page 416.

"NO REPERCUSSIONS REGARDING EMPLOYEES' SEXUAL ORIENTATION"

Because many law enforcement employers are unaware of their legal responsibilities, the Commission believes that all employers of peace officers in this state would benefit from management counseling regarding the illegality of sexual orientation discrimination both in recruitment and selection. Likewise, all police and sheriff departments could use assistance in developing instruction materials and segments of courses about the gay and lesbian communities to help dispel the myths and stereotypes which are still so pervasive within the departments and which foster the continuity of prejudice.

REPORT, page 420.

The California Commission on Peace Officer Standards and Training (P.O.S.T.) is "responsible for the establishment and maintenance of minimum standards of physical, mental and moral fitness for the recruitment, selection, and training of law enforcement officers."

Attorneys' Directory of Services and Information: Federal, California, and County Governments (Berkeley: Continuing Education of the Bar, 1977) pages 151-152.

 *
 * THE COMMISSION RECOMMENDS that the Commission on
 * Peace Officer Standards and Training, within its
 * established programs, develop minimum standards for
 * non-discrimination and equal employment opportunity
 * in recruitment, selection, and education by law
 * enforcement employers in the area of sexual orientation
 * discrimination. These standards should be disseminated
 * to all law enforcement employers in this state
 * at the earliest possible opportunity. Finally, on-
 * going audits conducted by P.O.S.T. should include an
 * examination of compliance with constitutional and
 * statutory sexual orientation discrimination laws.
 *

REPORT, page 421.

"P.O.S.T. STANDARDS FOR EQUAL EMPLOYMENT OPPORTUNITY"

Since sheriff departments are operated within the personnel system of counties, the County Personnel Administrators Association of California could provide assistance to its members in the form of educational programs and materials as well as professional counseling. The Local Government Services Division of the State Personnel Board plays an important role within this organization.

REPORT, page 421.

 *
 * THE COMMISSION RECOMMENDS that the SPB, through its
 * Local Government Services Division, develop or cause
 * to be developed educational and counseling materials
 * to assist county personnel administrators in under-
 * standing and meeting their legal and moral obliga-
 * tions to include "sexual orientation" within their
 * existing equal employment opportunity programs.
 *
 * THE COMMISSION FURTHER RECOMMENDS that city attor-
 * neys, county counsels, and district attorneys
 * throughout the state familiarize themselves with
 * formal legal opinions on the subject of sexual ori-
 * entation discrimination in government and private
 * employment, such as Gay Law Students Association v.
 * Pacific Telephone Co. (1979) 24 Cal.3d 458 and 63
 * Ops. Cal. Atty. Gen. 583 (1980). Then city and
 * county personnel administrators should be advised of
 * their current legal obligations not to discriminate
 * on the basis of sexual orientation. A policy state-
 * ment should also be developed and distributed to
 * deputy district attorneys regarding investigation and
 * prosecution of complaints alleging violation of sec-
 * tions 1101 and 1102 of the Labor Code, which sections
 * prohibit discrimination by private employers by rea-
 * son of an employee's political activity, including
 * being openly gay at work.
 *

REPORT, page 421.
 "SPB TRAINING FOR COUNTY
 PERSONNEL OFFICERS"
 "EDUCATION OF LOCAL GOV-
 ERNMENT ATTORNEYS"

C. TEACHERS IN PUBLIC SCHOOLS

The legal obligation, in public school teacher em-
 ployment practices, not to discriminate on the basis of
 sexual orientation, is based upon constitutional provi-
 sions dealing with privacy and equal protection as well
 as various government code sections.

School boards in cities such as Palo Alto, Santa
 Barbara, and San Francisco have adopted policies which
 prohibit such discrimination. Also, the major associa-
 tions and unions for educators have condemned sexual
 orientation discrimination against teachers, including:

- * American Federation of Teachers
- * United Federation of Teachers
- * California Federation of Teachers
- * National Education Association
- * National Council of Teachers of English

REPORT, page 422.
Gay Law Students Association v.
Pacific Telephone (1979) 24
 Cal.3d 458.
 Mendenhall, G., "Teacher Rights
 Approved," The Advocate, July 16,
 1975.

 *
 * THE COMMISSION RECOMMENDS that the State Board of
 * Education and the Superintendent of Public Instruc-
 * tion send notification to all local school districts
 * throughout the state reminding them that sexual ori-
 * entation discrimination in employment is illegal and
 * requesting them to update their equal employment
 * opportunity policy statements accordingly.
 *

REPORT, page 423.

"NOTIFY LOCAL DISTRICTS REGARDING EMPLOYMENT DISCRIMINATION"

The Commission takes note that the Board of Trustees of the California State University and Colleges System and some community colleges have already taken some action with respect to non-discrimination on the basis of sexual orientation.

 *
 * THE COMMISSION RECOMMENDS that the Board of Regents
 * of the University of California, the Trustees of the
 * California State University System, and the Board of
 * Governors of the California Community Colleges should
 * each review the nondiscrimination policies within
 * their respective systems for both admissions and
 * employment practices to ensure that "sexual orienta-
 * tion" has been added as a protected classification.
 * Equal employment opportunity personnel within each
 * system should receive training on sexual orientation
 * discrimination within ongoing training programs.
 * College placement services should require employers
 * to certify that they do not engage in sexual orienta-
 * tion discrimination.
 *

REPORT, page 422.

"UPDATE OF COLLEGE/-UNIVERSITY EMPLOYMENT POLICIES"

Public school teachers in California must be credentialed by the Commission on Teacher Preparation and Licensing. According to the California Supreme Court, a teacher's homosexuality, in itself, may not form the basis for revoking a teaching credential. Other professional licensing agencies in California have issued policy statements that "publicly affirmed homosexuality does not in itself preclude a person otherwise qualified from" obtaining a professional license.

Morrison v. State Board of Education (Cal. 1969) 461 P.2d 375.

 *
 * THE COMMISSION RECOMMENDS that the Committee of Cre-
 * dentials of the California Commission for Teacher
 * Preparation and Licensing issue a policy statement
 * that publicly-affirmed homosexuality will be treated
 *

REPORT, page 423.

"NON-DISCRIMINATION STATEMENT FROM CREDENTIALS COMMITTEE"

* the same as publicly-affirmed heterosexuality for *
 * purposes of denying, suspending, or revoking a teach- *
 * ing credential. *
 * * * * *

D. PRIVATE SECTOR

While employers in the private sector have more latitude in their employment practices than do government employers, they are still subject to a variety of restrictions that protect employee privacy, including:

REPORT, page 247.

- (1) common law privacy protection;
- (2) article 1, section 1 of the state Constitution;
- (3) state legislation prohibiting certain types of employment discrimination;
- (4) state legislation prohibiting the collection of certain information about employees or applicants;
- (5) sexual harassment legislation and administrative regulations; and
- (6) state legislation protecting employees from other forms of privacy infringements.

Some cities, such as Los Angeles and San Francisco, have ordinances which make it illegal for a private employer to discriminate on the basis of sexual orientation. Any applicant or employee who suffers from such discrimination has a private cause of action against the employer and can bring suit in court alleging a violation of such an ordinance.

REPORT, page 424.

For example, see Los Angeles Municipal Code, Ch. IV, Art. 4, Sec. 49.70 et seq.

Employers who engage in such discrimination in municipalities which do not have such an ordinance may still be liable under the law. A memo issued on June 13, 1979, by the State Labor Commissioner to those working in branch offices throughout the state underscored that criminal sanctions may be imposed against private employers who discriminate against openly gay employees:

REPORT, page 424.

In a recent Supreme Court decision . . . the court decided that homosexuals may assert a cause of action against an employer for violation of Labor Code Sections 1101 or 1102, alleging they were discriminated against because of their being "manifest" homosexuals or persons making "an issue of their homosexual-

ity." In its opinion, the court states, "The struggle of the homosexual community for equal rights, particularly in the field of employment, must be recognized as a political activity."

. . . Note that the remedy for violation is criminal prosecution.

Sexual orientation discrimination by private employers may also constitute a violation of the right of privacy in the state Constitution. A number of court decisions have held that an individual's sexual orientation is presumptively unrelated to fitness for a job; thus, such information is "unnecessary." One of the principal mischiefs that was to be addressed by the 1972 Privacy Amendment adopted by the voters was to curb the overbroad collection and retention of unnecessary personal information by government and business interests.

Finally, interrogations of applicants or employees about their sexual orientation may constitute a violation of the common law tort of privacy, being an intrusion into their private affairs.

Protection against sexual orientation discrimination in private employment is also being achieved through voluntary methods. Some private employers have announced that they do not discriminate on the basis of sexual orientation; some have disseminated their policies in company publications, such as personnel manuals and company newsletters. The following companies, among others, have used this approach:

ABC	Carnation Company	Oscar Mayer Co.
American Express	Adolph Coors	J.C. Penney
American Motors	Firestone Tire	Pitney Bowes
Anheuser Busch	General Electric	Rockwell Internat'l
Avon Products	Gibraltar Savings	Schlitz Brewing Co.
Bank of America	Honeywell	Sears
Bell & Howell	INA Corp.	Standard Oil of CA
Bendix	Johnson & Johnson	TRW
CBS	Metropolitan Life	United Airlines

In the process of collective bargaining, some employers are now being faced with union demands to include "sexual orientation" in the non-discrimination agreement. This method is proving to be another source of protection against sexual orientation discrimination in employment.

Both employers and employees would benefit from legislation creating a uniform statewide policy on sexual orientation discrimination in private employment.

White v. Davis (1975) 13 Cal.3d 757, 776.

Prosser, Torts (3rd Ed., 1964) Section 112, page 832.

REPORT, page 425.

 *
 * THE COMMISSION RECOMMENDS that the Legislature amend
 * the Fair Employment Practices Act to include "sexual
 * orientation" among those categories of discrimination
 * specifically prohibited by law.
 *

REPORT, page 426.
 "AMEND FAIR EMPLOYMENT
 PRACTICES ACT"

Privacy in private-sector employment is an area de-
 serving of focused and long-range study, not only because
 of the number of problems that exists, but also because
 of the complexity of the problems and because of the
 competing and often valid interests of employers.

 *
 * THE COMMISSION RECOMMENDS that the Labor Commissioner
 * establish a 12-month Task Force on Private-Sector
 * Employment Privacy. The purpose of this Task Force,
 * composed of a cross-section of business and labor
 * representatives, would be to identify recurring inva-
 * sions of employee privacy, to present legal provi-
 * sions which protect employee privacy, and to make
 * recommendations for legislative or administrative
 * actions that are necessary to further protect the
 * privacy rights of private-sector employees. This
 * Task Force should be created in early 1983 and should
 * report its findings and recommendations to the state
 * Labor Commissioner in early 1984. In turn, the Labor
 * Commissioner should make recommendations to the Leg-
 * islature based upon the report of this Task Force.
 *

REPORT, page 254.
 "CREATE LABOR COMMISSIONER
 TASK FORCE"

* THE COMMISSION FURTHER RECOMMENDS that the Legisla-
 * ture add a chapter to the California Labor Code that
 * would prohibit an employer from:

REPORT, page 255.
 "AMEND LABOR CODE TO PRO-
 TECT PRIVACY"

* (a) soliciting or requiring the divulgence
 * of any information about an employee's (or
 * prospective employee's) private life that has
 * not been demonstrated by the employer to be
 * necessary to the performance of the job;

* (b) using any information acquired about
 * an employee's (or prospective employee's)
 * private life that has not been demonstrated
 * by the employer to be necessary to the perfor-
 * mance of the job, to influence any decision
 * regarding the hiring, placement, promotion,
 * assignment, or termination of the employee;

* (c) subjecting an employee to harassment
 * or interrogation on the basis of information
 * acquired about the employee's private life

* that has not been demonstrated to be necessary *
 * to the performance of the job. *
 * * * * *

E. MONITORING/IMPLEMENTING EXISTING LAW

Since 1975, the United States Civil Service Commission has evaluated the suitability of individuals for federal employment based upon "fitness" or "merit" rather than allowing exclusions solely because a person is a homosexual or has engaged in homosexual acts.

REPORT, page 387.

5 C.F.R. Section 731.202(b); 40 Fed. Reg. 28047 (1975).

The Civil Service Reform Act of 1978 further "prohibits any employee who has authority to take personnel actions from discriminating for or against an employee or applicant for employment on the basis of conduct which does not adversely affect either the employee's own job performance or the performance of others."

In 1980, the federal Office of Personnel Management (OPM) issued a directive intended to advise and educate agency heads of the policy of OPM regarding the Civil Service Reform Act's effect on privacy and sexual orientation:

REPORT, page 389.

Causey, M., "The Federal Diary," The Washington Post, May 14, 1980, Page C-2.

The privacy and constitutional rights of applicants and employees are to be protected. Thus, applicants and employees are to be protected against inquiries into, or action based on, non-job-related conduct, such as religious, community, or social affiliations, or sexual orientation. An applicant or employee is also to be protected against any infringement of due process, self-incrimination or other constitutional rights.

The Department of Defense and the federal military are not affected by the reforms mentioned above, although courts in recent years have not been unanimous in their treatment of discharge proceedings based solely on homosexual status or tendencies (as opposed to conduct).

REPORT, page 390.

benShalom v. Secretary of Army, cited above; cf. Beller v. Middendorf, cited above.

In California, until 1979, there was no state agency specifically charged with the responsibility to investigate and remedy complaints alleging discrimination based upon sexual orientation. Similarly, there was no clear-cut legal authority giving lesbians and gay men a private cause of action against the state if it discriminated.

REPORT, page 392.

On April 4, 1979, Governor Edmund G. Brown Jr. issued an executive order prohibiting sexual orientation discrimination in state employment. This landmark order stated:

Executive Order B-54-79 (April 4, 1979).

WHEREAS, Article I of the California Constitution guarantees the inalienable right of privacy for all people which must be vigorously enforced; and

WHEREAS, government must not single out sexual minorities for harassment or recognize sexual orientation as a basis for discrimination; and

WHEREAS, California must expand its investment in human capital by enlisting the talents of all members of society;

NOW, THEREFORE, I, Edmund G. Brown Jr., Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this order to become effective immediately:

The agencies, departments, boards, and commissions within the Executive Branch of state government under the jurisdiction of the Governor shall not discriminate in state employment against any individual based solely upon the individual's sexual preference. Any alleged acts of discrimination in violation of this directive shall be reported to the State Personnel Board for resolution.

Within months after the executive order was signed, California's Supreme Court and Attorney General had issued opinions which confirmed and supported the anti-discrimination of the Governor.

The implementation agency for the non-discrimination policy of the state is the State Personnel Board. Since sexual orientation discrimination has been deemed to be "arbitrary discrimination," and violative of merit principles embodied in the state Constitution and state civil service laws, it is also appropriate for the SPB to have jurisdiction because of its constitutional mandate to oversee civil service.

The Commission's recommendations which follow may overlap to some extent the provisions in the SPB's implementation memo which is set forth in full in the Report of the Commission. In those cases, the purpose of the recommendation is to provide support and, in some aspects, practical assistance to the Board.

Gay Law Students Association, cited above; 63 Ops. Cal. Atty. Gen. 583 (1980).

REPORT, page 398.

Cal. Const., Art. VII, Sec. 3(a).

See SPB Memo at REPORT, pages 400-407.

 *
 * THE COMMISSION RECOMMENDS that the Executive Officer
 * of the State Personnel Board issue a new memorandum
 * to "All State Agencies and Employee Organizations"
 * fully explaining all legal bases of protection a-
 * gainst such discrimination. Such a memo is evidently
 * a part of the present plan of implementation, and the
 * Commission refers the Executive Officer to the sum-
 * mary of the legal bases found by the Commission,
 * below.
 *

REPORT, page 408.
 "SEND NEW MEMORANDUM TO
 ALL STATE AGENCIES"

SUMMARY OF LAW GOVERNING
 SEXUAL ORIENTATION DISCRIMINATION
 IN STATE EMPLOYMENT

REPORT, page 397.

(1) Article VII, §1(b) of the state Constitution [civil service]: merit system employers must not discriminate against any applicant or employee on account of his or her sexual orientation;

63 Ops.Cal.Atty.Gen. 583, 586 (1980).

(2) Article I, §1 of the state Constitution [right of privacy]: state agencies must refrain from prying into the sexual orientation of applicants or employees and must refrain from sharing or using sexual orientation information in a manner which may have an adverse impact on an applicant or employee;

Morrison v. State Board of Education, cited above; White v. Davis, cited above; Gunn v. Employment Development Department (1979) 94 Cal.App.3d 658; Fults v. Superior Court (1979) 88 Cal.App.3d 899; Morales v. Superior Court (1979) 99 Cal.App.3d 283.

(3) Article I, §7 of the state Constitution [equal protection]: state agencies must afford equality of opportunity to lesbians and gay men on the same terms as opportunities and benefits are afforded to applicants or employees with a heterosexual orientation;

Gay Law Students Association, cited above.

(4) State Civil Service Statutes [such as Government Code §18500 et seq.]: state agencies governed by these statutes must not discriminate on the basis of the sexual orientation of applicants or employees;

63 Ops.Cal.Atty.Gen. 583, 585 (1980).

(5) Government Code §3201 et seq. [political activities]: state agencies must refrain from pressuring employees to remain "in the closet" or discriminating against those who identify themselves as lesbians and gay men or who are involved in gay-rights activities;

Gay Law Students Association, cited above.

(6) Fourteenth Amendment to the United States Constitution [equal protection and due process]: government agencies may not engage in invidious discrimination against persons of one sexual orientation and must refrain from taking arbitrary action against employees or applicants; and

63 Ops.Cal.Atty.Gen. 583 (1980).

(7) Executive Order B-54-79, as construed by the California Attorney General.

63 Ops.Cal.Atty.Gen. 583 (1980).

*
* THE COMMISSION RECOMMENDS that the State Personnel
* Board establish a systematic procedure for monitoring
* and auditing departmental compliance with non-dis-
* crimination policies. After the Executive Officer
* sends out a revised memo explaining all bases for
* legal protection for the sexual orientation classifi-
* cation, departments should be advised that audits
* will require proof: (1) that "sexual orientation"
* has been added to non-discrimination policies wherev-
* er they appear in departmental literature; and (2) of
* the dates, circumstances, and methods which have been
* employed to inform personnel of the nature of sexual
* orientation discrimination and all legal bases under
* which it is prohibited. An audit of every department
* under the jurisdiction of the State Personnel Board
* should be completed within one year.
*

REPORT, page 408.

"SPB MONITORING/AUDITING ALL STATE AGENCIES"

Plans of implementation depend to a large extent on the allocation of human resources to develop and monitor programs both inside and outside of the State Personnel Board. Presently, one person is assigned sexual orientation duties one-quarter time within the SPB. This is insufficient and has created frustration, delays, oversights, and many deficiencies in implementation.

*
* THE COMMISSION RECOMMENDS that a person at the man-
* ager level be assigned to coordinate, on a full-time
* basis, implementation and monitoring of the Board's
* constitutional and statutory duties with respect to
* sexual orientation discrimination, and that, begin-
* ning with the 1983-1984 budget year, the Legislature
* provide funding for such a position.
*

REPORT, page 408.

"AUTHORIZE FUNDING FOR FULL-TIME SPB POSITION"

It is also apparent to the Commission that recent changes in state law have not filtered down to all local government officials throughout the state. Some municipalities are either unaware of their obligations under present law or simply choose to ignore them.

*
* THE COMMISSION RECOMMENDS that the Chair of the Local
* Government Committee of the California State Senate
*

* request from the California Attorney General a formal
 * written opinion stating whether sexual orientation
 * discrimination by local government employers is pres-
 * ently illegal and, if so, setting forth the consti-
 * tutional and statutory provisions under which local
 * government employers are prohibited from discriminat-
 * ing on the basis of sexual orientation. It is
 * further recommended that after such an opinion is
 * obtained, the local Government Committee transmit
 * copies of this legal opinion to city attorneys, coun-
 * ty counsels, and local government personnel officers.
 * This would be a constructive and positive way to
 * eliminate some of the discrimination which is a prod-
 * uct of ignorance of the law.
 *
 * * * * *

REPORT, page 412.
 "ATTORNEY GENERAL OPINION
 ON DISCRIMINATION"

The Commission also believes that self-enforcement by
 local government employers or, ultimately, judicial
 enforcement when victims have enough resources to use the
 courts, are inadequate remedies. No other minority group
 has been expected to "fight city hall" by itself. Racial
 and ethnic minorities, women, elderly, disabled, and
 other groups have the services of the state Department of
 Fair Employment and Housing to investigate and remedy
 discrimination against its members.

* * * * *
 *
 * THE COMMISSION RECOMMENDS that the Legislature au-
 * thorize the Department of Fair Employment and Housing
 * to investigate, conciliate, and remedy complaints
 * which allege that local government employers have
 * engaged in sexual orientation discrimination against
 * employees or job applicants with respect to hiring,
 * dismissal, or any other term or condition of employ-
 * ment. To accomplish this purpose, legislation should
 * be enacted to add "sexual orientation" to the Fair
 * Employment and Housing Act.
 *
 * * * * *

REPORT, page 412.
 "AMEND FAIR EMPLOYMENT AND
 HOUSING ACT"

There is also a tremendous lack of information as to
 the level of compliance by local government employers
 with non-discrimination laws. With respect to each of
 6,000 municipalities, a number of questions should be
 answered:

- * Is the employer aware that sexual orien-
 tation discrimination is presently illegal
 under state law?
- * Has the employer up-dated its non-dis-
 crimination policy in all relevant departmen-

tal employment documents and literature to reflect non-discrimination on the basis of sexual orientation?

* Have personnel officers, equal employment opportunity officers, affirmative action officers, and supervisory personnel in each department within the municipality received training regarding sexual orientation discrimination?

* Have pre-employment forms, questionnaires, and oral interviews eliminated direct or indirect questions relating to sexual orientation or "homosexual tendencies"?

* Have civil service rules eliminated homosexuality as a disqualifying employment factor?

 *
 * THE COMMISSION RECOMMENDS that the Local Government
 * Committee of the California State Senate conduct or
 * cause to be conducted a survey of local government
 * employers in California to determine the answers to
 * the questions listed above. The Local Government
 * Committee should devise a method to fund the survey
 * and might consider delegating the responsibility for
 * oversight of the project to the State Personnel
 * Board, Local Government Services Division. A report
 * containing survey results and an analysis should be
 * published by the Legislature.
 *

REPORT, page 413.

"CONDUCT LOCAL GOVERNMENT SURVEY ON COMPLIANCE"

XII. Housing

A. AMENDING/IMPLEMENTING EXISTING LAW

The practice of discriminating because of race, color, religion, sex, marital status, national origin, or ancestry, in housing accommodations has been declared to be against public policy and in violation of California fair housing law (formerly called the Rumford Fair Housing Act and now contained in the Fair Employment and Housing Act) as well as the Unruh Civil Rights Act. Although only certain categories are actually enumerated in each act, the Unruh Act has been held actually to cover all arbitrary discrimination, the explicit specification being merely "illustrative."

REPORT, page 427.

Marina Point, Ltd. v. Wolfson
(1982) 30 Cal.3d 721.

The California Department of Fair Employment and Housing is charged with the responsibility to enforce the present law. If it is determined that the law has been violated, certain remedies may be available, including, but not limited to, the sale or rental of the housing accommodations and payment of actual and punitive damages under the fair housing law, and processing and conciliation of complaints under the Unruh Act.

It has not been publicized, and it would be difficult for a layperson to ascertain, that the D.F.E.H. is empowered to handle housing complaints alleging sexual orientation discrimination or that the law covers such discrimination under Unruh Act jurisdiction.

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* * * * *
*
* THE COMMISSION RECOMMENDS that the following actions
* be taken to ensure fair housing practices for les-
* bians and gay men:
*
* (1) a legislative amendment of the Unruh Civil Rights
* Act and Rumford Fair Housing Act, listing "sexual
* orientation" with other enumerated bases of dis-
* crimination which are prohibited;
*
* (2) a technical amendment to the Unruh Civil Rights
* Act, indicating that the Department of Fair Em-
* ployment and Housing has jurisdiction to receive
* complaints alleging violations under that Act;
*
* (3) an immediate update by the Department of Fair
* Employment and Housing of the literature that it
* disseminates to the public, to indicate clearly
* that the Department has jurisdiction to investi-
* gate housing cases alleging sexual orientation
* discrimination; and
*

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REPORT, page 431.

"ADD 'SEXUAL ORIENTATION'
TO HOUSING LAWS"

"INDICATE AGENCY JURISDIC-
TION IN UNRUH ACT"

"UPDATE D.F.E.H. LITERA-
TURE"

* (4) that the Housing Unit within the Department of
 * Fair Employment and Housing engage in educational
 * projects, to increase community awareness of the
 * protections already afforded under the Unruh Act
 * with respect to sexual orientation discrimina-
 * tion.
 *
 * * * * *

"EDUCATIONAL PROJECTS IN
 D.F.E.H. HOUSING UNIT"

B. HOUSING/EMPLOYMENT DISCRIMINATION STUDY

State law authorizes the Fair Employment and Housing
 Commission to create advisory councils to study discrimi-
 nation in any field of human relationships.

Labor Code Section 1418(g).

* * * * *
 *
 * THE COMMISSION RECOMMENDS that the Fair Employment
 * and Housing Commission establish a statewide Advisory
 * Council on Sexual Orientation Discrimination. Its
 * mandate should be to study the causes and manifesta-
 * tions of sexual orientation discrimination in
 * California, especially as it occurs in the areas of
 * employment and housing. That Council periodically
 * should advise the Fair Employment and Housing Commis-
 * sion on the status of such discrimination and could
 * recommend administrative and legislative actions to
 * further the policy of this state to eliminate such
 * discrimination.
 *
 * * * * *

REPORT, page 432.
 "CREATE ADVISORY COUNCIL
 ON SEXUAL ORIENTATION DIS-
 CRIMINATION"

C. PROTECTION FOR RENTERS WITH CHILDREN

A recent California Supreme Court decision prohibits
 discrimination by landlords against renters with chil-
 dren. Notwithstanding this judicial precedent, as a mat-
 ter of setting priorities, the Department of Fair Employ-
 ment and Housing has directed its staff not to accept
 cases involving such discrimination. Discrimination
 against persons who choose to raise children not only
 constitutes arbitrary discrimination within the meaning
 of various civil rights statutes, but also infringes on
 decisional privacy rights protected by Article I, Section
 1 of the California Constitution.

Marina Point, Ltd. v. Wolfson,
 cited above.

* * * * *
 *
 * THE COMMISSION RECOMMENDS that the Department of Fair
 * Employment and Housing include housing cases involv-
 * ing discrimination against renters with children
 * within its list of "priorities."
 *
 * * * * *

REPORT, page 432.
 "EXERCISE JURISDICTION IN
 RENTERS-WITH-CHILDREN
 CASES"

XIII. Consumer Issues

A. CREDIT

The California Legislature has enacted a number of statutes protecting personal privacy in various financial transactions. Under the Consumer Credit Reporting Agencies Act, consumers have a right to inspect any files or records about them maintained by such an agency. If information is inaccurate, the consumer has a right to have corrections made. Users of credit reports from these agencies must notify a consumer if an adverse decision pertaining to that consumer is based in whole or part on such a report.

REPORT, page 256.

Civil Code Section 1785.1 et seq.

The Civil Code also gives consumers who are the subjects of investigations conducted by investigative consumer reporting agencies a right to inspect all files and records maintained by the agency about them.

The Commission's study has revealed that existing legal provisions protecting consumers against loss of privacy are inadequate.

*
* THE COMMISSION RECOMMENDS that the Legislature amend
* the Consumer Credit Reporting Agencies Act to accom-
* plish the following objectives: (1) the definition
* of "legitimate business need" be narrowed to include
* only "consumer-initiated transactions"; and (2) con-
* sumer credit bureaus that maintain computerized con-
* sumer credit files be required to obtain a special
* permit to do business in California, and that such
* permits be issued or renewed by the California De-
* partment of Consumer Affairs only to credit bureaus
* that conduct certified annual audits of data security
* systems, proving that their systems record the
* date, time, and identification of anyone gaining ac-
* cess to computerized credit files.
*

REPORT, page 258.

"CONSUMER CREDIT REPORTING AGENCIES"

The Commission is troubled by the fact that tenant reporting services are not presently covered by the Consumer Credit Reporting Agencies Act and that present law does not adequately protect millions of California renters from the abusive information practices of some of these reporting services.

REPORT, page 258.

"'Tenant Check' Lists the Un-desireable -- And the Innocent," L.A. Times, April 13, 1982, Part 1, page 3; 12 Loyola of L.A. Law Rev. 301 (1979).

*
* THE COMMISSION RECOMMENDS that the Legislature enact
* legislation to subject renter reporting services to
*

* the protections contained in the California Consumer
 * Credit Reporting Agencies Act. Accuracy of Informa-
 * tion, fair notice procedures, consumer access to
 * records, and purging of adverse information after a
 * reasonable period of time should all be included in
 * any future legislative efforts on behalf of the pri-
 * vacy rights of tenants.
 *
 *
 * * * * *

REPORT, page 260.
 "REGULATE RENTER REPORTING
 SERVICES"

Several other statutes regulate the area of financial
 privacy. Customer lists of telephone answering services
 and employment agencies are protected as trade secrets.
 The willful betrayal of a professional secret by a physi-
 cian constitutes unprofessional conduct, which may result
 in discipline being imposed by the Board of Medical
 Examiners. Private trust companies may not disclose
 information concerning the administration of any private
 trust confided to them. Credit may not be denied to
 anyone on the basis of marital status. Bookkeeping ser-
 vices may not disclose the content of any records or
 information to anyone other than the person or entity who
 is the subject of the record. Finally, the California
 Right to Financial Privacy Act sets forth the procedures
 and policies for government access to client records
 maintained by financial institutions.

Bus. and Prof. Code Sections
 16606, 16607.
 Bus. and Prof. Code Section 2379.
 Financial Code Section 1582.
 Civil Code Section 1812.30 et
 seq.
 Civil Code Sections 1799, 1799.1.
 Gov. Code Section 7460 et seq.

B. INSURANCE

The Insurance Information and Privacy Protection Act
 became law as of October 1, 1981, and is scheduled to
 expire in 1989. The remedies provided by this Act are
 both exclusive and rather limited. Lawsuits based upon
 defamation, invasion of privacy, or negligence for wrong-
 ful disclosures, are specifically prohibited. If an
 insurance entity fails to comply with those sections of
 the Act that provide guidelines for access to records,
 correction of records, or adverse underwriting decisions,
 the aggrieved consumer has only two non-monetary
 remedies: (1) complain to the Insurance Commissioner, or
 (2) seek a court order requiring the company to comply
 with the law. If an insurance entity violates the sec-
 tion on unauthorized disclosures, the person harmed may
 recover only actual damages for the violation.

REPORT, page 263.
 Insurance Code Section 791 et
 seq.

* * * * *
 *
 * THE COMMISSION RECOMMENDS that the California Legis-
 * lature amend section 791.20 of the Insurance Code to
 * provide for damages when insurance entities violate
 * the rights of consumers to gain access to their
 * records, to correct or amend inaccurate records, and
 * to obtain an explanation for adverse underwriting
 * decisions. Each violation of these particular rights
 *

REPORT, page 267.
 "INCREASE DAMAGES FOR VIO-
 LATION OF LAWS"

* should carry a minimum penalty of \$1,000 or the
 * amount of actual damages suffered, whichever is
 * greater.
 *
 * THE COMMISSION FURTHER RECOMMENDS that the California
 * Legislature amend section 791.20(b) of the Insurance
 * Code to provide for a minimum penalty of \$1,000 or
 * actual damages, whichever is greater, for unau-
 * thorized disclosures of personal information.
 *
 * * * * *

Communications with persons in the Insurance Commis-
 sioner's office regarding any fact concerning the holder
 of, or applicant for, a certificate or license issued
 under the Insurance Code, are deemed to be made in offi-
 cial confidence. This statute affords some privacy pro-
 tection to persons cooperating with the Commissioner in
 investigations pertaining to businesses that must hold
 certificates or licenses under the Insurance Code.

Insurance Code Section 12919.

Persons or financial institutions that lend money for
 real property transactions usually have a beneficial
 interest in fire or casualty insurance policies on the
 subject property. As a result, the lending institution
 gains possession of personal information about the bor-
 rower. Section 770.1 of the Insurance Code prohibits the
 lender from sharing such personal information with busi-
 nesses that may desire to solicit the owner to purchase
 additional or substitute insurance coverage on the prop-
 erty if the borrower has filed a statement with the
 lender prohibiting the sharing of such information. The
 Commission finds the intent of this provision to be
 laudable but the protection to be inadequate.

REPORT, page 267.

* * * * *
 *
 * THE COMMISSION RECOMMENDS that Section 770.1 of the
 * Insurance Code be amended to prohibit lenders from
 * sharing with third parties any personal information
 * about borrowers that lenders obtain from the bor-
 * rowers' insurance policies, unless lenders have spe-
 * cifically sought and obtained authorization from the
 * borrowers for such disclosure. Present laws au-
 * thorize disclosure unless the borrower takes affirma-
 * tive action to file a prohibitory statement. The
 * proposed amendment would reverse this and prohibit
 * such disclosure unless the lender takes affirmative
 * steps to notify the borrower of the intended disclo-
 * sure and gives the borrower a genuine opportunity to
 * authorize or refuse to allow this type of a disclo-
 * sure.
 *
 * * * * *

REPORT, page 268.

"AMEND INSURANCE CODE TO
PROVIDE STRICTER LIMITS ON
LENDERS"

C. ELECTRONIC FUND TRANSFERS

Because such systems necessarily involve central computers with links to and between merchants and banks, with access to bank customers' financial and other personal information, as well as information regarding what one is purchasing and from whom, electronic fund transfer systems pose a serious threat to the personal privacy of consumers.

REPORT, page 260.

As such systems become more prevalent, the need for protection becomes more critical, and such protection should minimally include:

Supplement Four, "Transcript of Public Hearings," pages SF/86 - SF/87.

(1) strict licensing of EFTS data banks, requiring the tightest control possible on access;

(2) outlawing of bifurcation and "piggy-backing" so as to minimize the data base, eliminating the details of transactions; and

(3) requiring full disclosure to the customers of the privacy risks in using an EFTS.

*
* THE COMMISSION RECOMMENDS that the California Legis-
* lature take immediate action to protect Californians
* against the threat to privacy that these systems
* pose. Furthermore, the Commission recommends that
* the minimum safeguards outlined above be incorporated
* into such protective legislation.
*

REPORT, page 262.

"REGULATE ELECTRONIC FUND TRANSFER SYSTEMS"

XIV. Family Matters

A. DEFINING FAMILY

Recent Supreme Court decisions have recognized that the term "family" actually encompasses a wide diversity of relationships for the people of this state:

The definition of a "family" in our society has undergone some change in recent years. It has come to mean something far broader than only those individuals who are united in formal marriage. Many individuals are united by ties as strong as those that unite traditional blood, marriage and adoptive families.

REPORT, pages 125-127.

In re Cummings (1982) 30 Cal.3d 870, 874-875.

*
* THE COMMISSION RECOMMENDS that the California Legis-
* lature enact procedures allowing members of
* California's "alternative families" (persons who are
* domiciled in the same household and who consider
* themselves to be a family unit, regardless of whether
* they are related by blood, marriage, or adoption)
* officially to declare their family status. A docu-
* ment evidencing such official declaration should be
* produced so that all Californians who are members of
* families can equitably share state and local re-
* sources. Such procedures would assist all family
* members to participate in benefit programs such as
* employment programs offering medical, dental, or
* other benefits to members of an employee's family.
*

REPORT, page 127.

"DECLARATION OF FAMILY STATUS"

B. TAXES

The state Controller recently commissioned a consultant to study the area of inheritance taxation and alternate families. The resulting report recommended that the Controller's office take a leadership role in investigating how these changes [in the make-up of families and households] affect the whole area of taxes and taxation." The specific recommendation was for a "special commission to investigate the matter of taxes and social change with the objective of achieving an equitable tax structure that meets the needs of our changing times."

Supplement Four, "Transcript of Public Hearings," pages SF/44 - SF/48.

Foster, J., "The California Inheritance Tax and Alternative Relationships," July 13, 1981, prepared at the request of Controller Kenneth Cory.

*
* THE COMMISSION RECOMMENDS that the state Controller
* propose legislation to rectify the inequities identi-
* fied in the report entitled "California Tax Laws and

REPORT, page 295.

"AMEND TAX LAWS FOR ALTERNATE FAMILIES"

* Alternate Families." This report may be found in the *
 * Supplements to the Commission's Report. *
 * *
 * THE COMMISSION FURTHER RECOMMENDS that the Legisla- *
 * ture amend Section 17044 of the Revenue and Taxation *
 * Code so as to delete subdivision (a). The result of *
 * such an amendment would be that a taxpayer with a *
 * recognized dependent could file a state income tax *
 * return as "head of household" whether or not the *
 * taxpayer and the dependent are related by blood, *
 * marriage, or adoption. *
 * *
 * * * * *

C. FAMILY PLANNING

Various departments within the Executive Branch of state government have issued guidelines, rules, regulations, or policy statements with respect to personal privacy protection. For example, the Advisory Board to the Office of Family Planning adopted a resolution at its meeting in San Diego on March 5, 1981, supporting the sexual privacy rights of teenagers. The Advisory Board expressed opposition to the proposed regulation of the Secretary of the United States Department of Health and Human Services that would require any state, local, or private agency operating with federal funds to notify the parents of teenagers before providing information or services for family planning. The Commission subsequently received a letter from the Director of California's Department of Health Services asking this Commission to oppose the regulation.

REPORT, page 295.

Family planning information and decisions, especially pertaining to contraception and abortion, are protected by the right of privacy in both the state and federal Constitutions. Teenagers do not forfeit their constitutional rights merely because of their minority status. Some parents are already involved in ongoing dialogues with their teenagers on the subject of family planning. For these teens the notice requirement imposed by federal regulations will not have an adverse impact. But many adolescents live under conditions in which their sexuality is a subject for neither discussion nor expression. The Commission notes that there is a large class of teenagers whose freedom of choice in family planning, for all practical purposes, will be denied by the federal notice requirement. While the Commission encourages open discussion on sexuality between teens and their parents, the fact remains that many parents have created virtually insurmountable barriers to such a dialogue. Present law in California provides for confidentiality for these teenagers in matters of family planning, contraception, and abortion, should they find such privacy necessary.

REPORT, page 296.

State and local family planning agencies should not be coerced by a federal regulation and its concomitant "power of the federal pursestring" to withdraw privacy rights that have already been extended to teenagers.

The Commission finds that the Health and Human Services Agency regulation requiring parental notification before any family planning services are provided to teenagers (42 C.F.R., Part 59, sub. a) is incompatible with the broad privacy protections that teenagers enjoy under California's constitutional right of privacy.

The Commission also finds that the regulation is inconsistent with the President's platform of states' rights and federalism in that states that, under state law, have recognized privacy rights for teenagers which are broader than privacy rights afforded under the federal Constitution, should not be compelled to reduce privacy for teenagers to the minimal federal standards. Federal regulations should be revised to allow for the right of a state in its wisdom, to give teenagers more privacy protection than the federal government deems wise.

*
* THE COMMISSION RECOMMENDS that this regulation be
* eliminated because it interferes with the rights of
* states, such as California, to be more protective of
* the privacy of teenagers than would the federal gov-
* ernment.
*

REPORT, page 296.

"PRIVACY AND TEENAGE
FAMILY PLANNING RULES"

D. SEX EDUCATION

*
* THE COMMISSION RECOMMENDS that the Legislature re-
* peal Section 51550 of the California Education Code.
* This statute has provisions which treat sex education
* differently than any other aspect of the curriculum
* in public schools. The provision of this statute that
* prohibits a student from attending sex education
* classes if his or her parent requests non-attendance,
* is particularly offensive to the student's right to
* learn and constitutes an overly broad infringement on
* the student's freedom of academic choice.
*
* THE COMMISSION FURTHER RECOMMENDS that the state
* Department of Education mandate age-appropriate
* "Family Life / Parenting / Sex Education / Human
* Relations" as a required course for all public pri-
* mary and secondary students. The Department of Edu-
*

REPORT, page 297.

Also see Supplement One,
"Recognizing Sexual Ori-
entation Within the Se-
condary School Curricu-
lum."

"REPEAL SCHMITZ ACT ON SEX
EDUCATION"

"MANDATE SEX EDUCATION"

* cation should establish a permanent Division of *
 * Family Life and Sex Education, with adequate staff *
 * and budget, which would have responsibility for cre- *
 * ating educational materials for use in such courses *
 * throughout the state. *
 * *
 * * * * *

E. INSTITUTIONALIZED CHILDREN

* * * * *
 * *
 * THE COMMISSION RECOMMENDS that the departments of *
 * Mental Health, Corrections, Youth Authority, Social *
 * Services, and Developmental Services require adequate *
 * and appropriate training in human sexuality and *
 * sexual orientation for all staff and ancillary per- *
 * sonnel who counsel or oversee children and ado- *
 * lescents in state operated institutions. *
 * *
 * * * * *

REPORT, page 297.

"TRAINING FOR STAFF IN YOUTH INSTITUTIONS"

XV. Medical and Mental Health

A. PATIENTS' RIGHTS

A summary of the statutes and cases that govern the area of medical decision-making for adult patients establishes these guidelines:

REPORT, pages 209-245.

* Absent an emergency, medical treatment may be rendered only with the patient's "informed" -- that is, after reasonable disclosure regarding treatment to be used, the risks, and available alternatives -- consent.

Cobbs v. Grant (1972) 8 Cal.3d 229, 242.

* In an emergency, a doctor may perform medical services without obtaining informed consent from anyone; the law implies patient consent under such circumstances.

* The parent, or, if a "conservator of the person" has been appointed, such conservator of an incompetent adult patient has the right to give informed consent for that adult's medical treatment.

* If a patient is incompetent or otherwise unable to give informed consent, a doctor may proceed with the consent of the "closest available relative."

* If a parent or relative or conservator is not available, or if the doctor refuses to proceed with their consent, a relative or friend or other interested party may be authorized by a superior court to give informed consent on behalf of the incompetent adult patient.

Probate Code Section 3200 et seq.

California's new Uniform Durable Power of Attorney Act, effective January 1, 1982, gives a principal the power to appoint an agent who can perform virtually every act, during the principal's incapacity, that the principal could perform were he or she not incompetent. However, absent a clear legislative statement regarding the validity of using a durable power of attorney for medical decision-making, some authorities advise hospitals not to substitute a power of attorney for the other informed consent rules stated above.

REPORT, page 213.

Civil Code Sections 2400-2423.

An amendment to the Durable Power of Attorney Act is needed to clear up any ambiguities in present law as to the legality of a principal's delegating medical decision-making authority to an agent of his or her choice. One public policy served thereby is preserving one's

right to make one's own medical decision; another is one's right to delegate medical decision-making authority; yet another is fostering efficiency and economy in health care services. Clarification would benefit a number of classes of individuals, including: (1) college students whose parents live a great distance away; (2) elderly persons who live alone and whose parents are deceased; (3) unmarried persons who have a "significant other" who is willing to accept such responsibility; and (4) a divorced parent who would like to designate which one of his or her several children should have primary responsibility for making such decisions.

*
* THE COMMISSION RECOMMENDS that the Durable Power of
* Attorney Act (Civil Code Sections 2400-2423) be
* amended to specify that a durable power of attorney
* may be used to delegate medical decision-making au-
* thority to an agent of the principal's choice. The
* Commission further recommends that such a delegation
* pursuant to a durable power of attorney be required
* to be witnessed and notarized.
*

REPORT, page 216.

"AMEND DURABLE POWER OF
ATTORNEY ACT FOR MEDICAL
PURPOSES"

For minors, medical decision-making regarding treatment requires the consent of a parent or adult guardian except when the minor: (1) is married; (2) is on active duty with the armed forces; (3) is seeking medical services for prevention of or treatment regarding pregnancy; (4) has been sexually assaulted; (5) is over 15 years old and is financially independent and living separately from the parents; or (6) is over 12 years old and (a) an attending professional believes the minor to present a serious danger without outpatient mental health services, (b) a victim of incest or child abuse seeking outpatient mental health services, (c) seeking diagnosis or treatment for a communicable or sexually transmitted disease, (d) a victim of rape seeking hospital or surgical or medical services, and (e) seeking diagnosis or treatment of a drug or alcohol-related problem.

REPORT, page 217.

Civil Code Sections 25.6, 25.8,
25.9, 34.5, 34.6, 34.7, 34.8,
34.9, 34.10.

Visiting rights -- access to the patient by loved ones, family, and friends -- seem to be a matter of local hospital policy and not of state law. Hospital policies often give preferential visiting status to certain blood relatives to the exclusion of others, perhaps demoting persons who actually have a more intimate association with the patient. Implementing freedom of intimate association in a hospital setting should not be left to the unbridled discretion of each hospital or to the possible prejudice of hospital staff.

REPORT, page 220.

* THE COMMISSION RECOMMENDS that freedom of patient

* choice in hospital visiting privileges be deemed a

* personal right protected by the California Civil

* Code. A new statute on patient visiting rights

* should provide that:

* (1) if the patient is competent, the pa-

* tient and not the hospital should have the

* right to designate whether someone is a member

* of the "immediate family" for visiting pur-

* poses;

* (2) if a hospital has a legitimate need to

* limit the number of visitors, a competent

* patient should be permitted to choose which

* individuals are to be given priority; and

* (3) if the patient is temporarily incom-

* petent due to some disabling factor, a visitor

* presenting a declaration of visiting priority,

* previously executed by the patient, would

* receive priority status as specified in the

* declaration, notwithstanding hospital policies

* which establish different standards for pri-

* ority.

* Such legislation should also require as a routine

* admitting procedure, that hospitals notify patients

* of visiting restrictions and provide patients with a

* standard form for designating priority visiting priv-

* ileges for persons who are not given priority under

* existing hospital policies and practices.

REPORT, page 221.

"FREEDOM OF PATIENT CHOICE
IN VISITATIONS"

The so-called "Patients' Bill of Rights," adopted by

the Legislature for persons receiving mental health care,

applies to persons involuntarily detained for treatment,

voluntarily admitted for treatment, or developmentally

disabled persons committed to a state hospital. Under

the provisions of the Lanterman-Petris-Short Act, such

patients maintain basic rights, which must be posted in

the facility and otherwise brought to the attention of

patients, including the following personal privacy

rights:

REPORT, page 223.

- (1) storage space for private use;
- (2) visitors each day;
- (3) confidential telephone calls;

Welf. and Inst. Code Sections
5325, 5325.1.

- (4) unopened correspondence;
- (5) dignity, privacy, and humane care; and
- (6) social interaction.

The Act also provides that treatment shall always be provided in ways that are least restrictive of the personal liberties of the individual.

Welf. and Inst. Code Section 5325.1(a).

For these patients, the law authorizes limited participation in the decision-making process by a "responsible relative" of the patient's choosing. The Commission has found the definition of "responsible relative" as it appears in the Welfare and Institutions Code to be discriminatory and an invasion of privacy in that it is limited to certain blood relatives. Some patients have been raised all of their lives in foster homes with loving and caring foster parents. Others might favor a loved and trusted distant relative; still others may be members of the hundreds of thousands of California's "alternate families."

REPORT, page 225.

Welf. and Inst. Code Sections 5326.6 and 5326.7.

 *
 * THE COMMISSION RECOMMENDS that the phrase "responsible relative of the patient's choosing" as used in Welfare and Institutions Code Section 5326 et seq. be replaced with the phrase "family member of the patient's choosing." For this purpose, the term "family member" should be defined as "any person related to the patient by blood, marriage, or adoption, or any person the patient has declared to be a member of his or her family." Section 5326 et seq. establish a procedure for obtaining informed consent to psychiatric treatment and now require the treating physician to make the signed consent form available to a responsible relative of the patient's choosing. This amendment would broaden the class of persons that patient could designate as authorized to have access to the signed consent form. Such an amendment would protect the patient's freedom of family choice by removing arbitrary restrictions on whom may be considered a member of the patient's family.
 *

REPORT, page 225.

"REDEFINE 'PATIENTS' FAMILY"

Members of the Commission have studied in some depth the problems of medical and mental health care patients, both in and outside of institutions. The Commission found existing statutory and administrative protections of the personal privacy rights of such patients to be inadequate.

REPORT, page 237.

THE COMMISSION RECOMMENDS that the Legislature take the following actions with respect to the privacy rights of patients:

(1) Amend the Welfare and Institutions Code, particularly sections dealing with patients' rights, to specify that patients have a right to have private communications each day, both with visitors and with other patients, in rooms or areas designed to achieve the degree of privacy and intimacy that one would reasonably expect in a non-institutional setting.

(2) Amend the Welfare and Institutions Code to require that at least one privacy room be set aside in each unit of each state hospital for private use by the patients, for social, recreational, or other lawful purposes.

(3) Adopt a statewide policy setting standards for conducting searches, especially strip-searches, of patients. Los Angeles County has recently adopted standards requiring "probable cause" for such searches. Statewide standards are necessary so that patients' privacy rights are not dependent on the unbridled discretion of local administrators/service providers.

(4) Enact legislation requiring all key personnel in departments that (a) provide either medical or mental health services, (b) license or regulate such providers, or (c) administer health programs, to participate in ongoing educational programs pertaining to the personal privacy rights of patients. Included in this category would be the following personnel: licensed health care professionals, patients' rights advocates, departmental investigators, security personnel, program directors, and maintenance personnel who have access to areas normally considered private.

THE COMMISSION FURTHER RECOMMENDS that the State Department of Health Services promulgate regulations amending the declaration of rights of patients in licensed health care facilities, community care facilities, and continuing care facilities, as listed in Title 22 of the California Administrative Code, as follows:

REPORT, page 238.

"AMEND PATIENTS' RIGHTS STATUTES"

REPORT, page 241.

Also see Supplement Two, "Report of the Committee on Aging and Disability" and "Report of the Task Force on Aging."

* amending Title 22 of the California Administrative
* Code to support the following legislatively mandated
* rights:

* (1) every adult person has the right to
* engage in consensual sexual conduct in the
* privacy of one's home or other private loca-
* tion;

* (2) every mentally ill and every develop-
* mentally disabled adult has the same rights as
* every other adult of the same age regardless
* of disability, unless medically contraindi-
* cated;

* (3) every patient and other adult resident
* of licensed facilities have basic privacy
* rights;

* (4) a residential facility is reasonably
* considered to be the temporary or permanent
* home of an individual residing therein. Spe-
* cific regulations are needed to articulate the
* following rights:

* (a) Freedom of Association and Communica-
* tion: amend sections or subsections of
* the declaration of patient's rights per-
* taining to freedom of association and
* communication for all licensed facilities
* (skilled nursing facilities, intermediate
* care facilities, intermediate care facili-
* ties for the developmentally disabled,
* acute psychiatric hospitals, community
* care facilities, and foster homes), such
* as Sections 72423(a)(12), 73523(a)(12),
* 76525(a)(24), and 71507(a)(3), to read,
* "To associate and communicate privately
* with persons of one's choice and to send
* and receive personal mail unopened unless
* medically contraindicated, and to be free
* from ridicule or criticism by staff for
* choice of association, frequency or dura-
* tion of the visits or communications."

* (b) Privacy in Intimate Associations:
* amend Section 72523(a)(15) of Skilled
* Nursing Facilities declaration of patient
* rights to read, "Regardless of marital
* status, to be assured privacy for visits
* by a person or persons of one's choosing,
* and if they are patients in the facility,
* to be permitted to share a room, unless
* medically contraindicated." Amend or add

REPORT, page 242.

"INTIMATE ASSOCIATION/PRI-
VATE COMMUNICATION"

* take the following actions:

* (1) require reviewers to utilize a comprehensive patients' rights checklist during the annual or periodic review of client/patient progress conducted for state licensed programs or facilities;

* (2) require reviewers to utilize the department-approved checklist in the following manner: (a) each right specified in statutes and administrative regulations (as indicated on the checklist) should be individually communicated to the client; (b) after each right is so communicated, the reviewer should ask the client if this right has been denied or limited in any way since the last review; and (c) the reviewer should record the client's response separately for each right.

* The Clients'/Patients' Rights Advocates within each of these departments should prepare a standard checklist to be used for the periodic reviews required by the department. The checklist should clearly indicate each patient right which has been legislatively or administratively declared. Routine use of such checklists should begin no later than January 1, 1984.

B. ACCESS TO INFORMATION

A newly enacted bill gives a patient a right of access to both medical and mental health records; either the patient or the patient's representative may inspect and copy such records. The statute now defines "patient representative" as a parent or guardian of a minor patient or the guardian or conservator of an adult patient. The Commission finds this definition too restrictive.

* THE COMMISSION RECOMMENDS that the definition of "patient's representative" as used in Statutes of 1982, Chapter 15 (AB 610) be amended to include "any other adult designated by the patient." To protect against possible fraud, it is also recommended that the law require the instrument designating such representative and signed by the patient for this purpose to be witnessed.

REPORT, page 243.

"ANNUAL PATIENTS' RIGHTS REVIEWS AND CHECKLISTS"

REPORT, page 218.

AB No. 610; Stats 1982, Ch. 15 (adding chapter 6.7 to Division 20 of Health and Safety Code).

REPORT, page 226.

"REDEFINE 'PATIENT'S REPRESENTATIVE"

Under the Lanterman-Petris-Short Act, information and records obtained in the course of providing services to voluntary and involuntary mental health patients are confidential. However, upon request by a member of a patient's family or other person designated by the patient and with the patient's prior authorization, a public or private mental health care facility must disclose (a) the patient's presence in the facility, (b) any diagnosis as well as medication prescribed and any side effects, and (c) the patient's progress and the seriousness of illness.

REPORT, page 226.

Welf. and Inst. Code Section 5328.

Welf. and Inst. Code Section 5328.1.

If no such person is designated and the patient is unable or refuses to consent to disclosure, the facility must disclose the patient's presence in the facility only to a "spouse, parent, child, or sibling of the patient." The Commission finds the class of persons who must be so informed to be too limited. Persons sharing a household with the patient are as likely to be alarmed by an unexplained absence as would relatives who do not reside with the patient.

REPORT, page 228.

*
* THE COMMISSION RECOMMENDS that section 5328.21 of the
* Welfare and Institutions Code be amended. The class
* of persons who must be informed as to the presence of
* a patient in a mental health care facility should be
* expanded to include the "spouse, parent, child, sib-
* ling, and household member, as well as any person
* authorized by the patient to receive such informa-
* tion."
*

REPORT, page 228.

"INFORMATION TO PATIENTS'
HOUSEHOLD MEMBERS"

The penalties provided in the Lanterman-Petris-Short Act and the Confidentiality of Medical Information Act for unauthorized disclosures of patient information or records, are extremely unrealistic and would not satisfactorily "punish" would-be offenders in order to provide a deterrence, or adequately compensate a victim of such a wrongful disclosure for the consequences of such a disclosure, including anxiety, embarrassment, and potential future economic loss.

REPORT, page 228.

*
* THE COMMISSION RECOMMENDS that section 56.35 of the
* Civil Code be amended in the following ways to cure
* defects the Commission perceives in the damages sec-
* tions of the Confidentiality of Medical Information
* Act. First, the law should provide for a minimum of
* \$500 in damages for any negligent or intentional
* violation of this Act. Second, the present ceiling
*

REPORT, page 229.

"INCREASE DAMAGES FOR VIO-
LATION OF LAWS"

* of \$3,000 punitive damages for willful violations *
 * should be eliminated; instead, the trier of fact *
 * should assess the appropriate amount of any punitive *
 * damages to be imposed. Third, patients who prevail *
 * in litigation arising under this Act should be en- *
 * titled to recover attorney fees and costs of litiga- *
 * tion. *
 *

* THE COMMISSION FURTHER RECOMMENDS that the damages *
 * sections of the Lanterman-Petris-Short Act (Section *
 * 5330 of the Welfare and Institutions Code) also be to *
 * provide that patients who prevail in litigation under *
 * this Act should be entitled to recover attorney fees *
 * and litigation costs. *
 *

C. TRAINING FOR PROVIDERS AND STAFF

* THE COMMISSION RECOMMENDS that the Governor issue an *
 * Executive Order creating an Inter-Agency Committee on *
 * Personal Privacy in Health and Social Services. The *
 * Inter-Agency Committee should consist of representa- *
 * tives from the following departments: Aging, Social *
 * Services, Health Services, Developmental Services, *
 * Rehabilitation, and Mental Health. The Director of *
 * one of these departments should serve as Chairperson, *
 * as designate by the Governor. The Inter-Agency Com- *
 * mittee, with appropriate staffing, should perform the *
 * following functions: *

* (1) Training: (a) develop, conduct, and *
 * evaluate training programs for service pro- *
 * vider agencies regarding personal privacy *
 * rights, freedom of intimate association, in- *
 * cluding lawful sexual conduct, and protections *
 * against sexual orientation discrimination; (b) *
 * develop standardized training and materials *
 * that allow for updating as laws and regula- *
 * tions change, that are thorough in the areas *
 * identified; and (c) prepare the materials in *
 * the languages of the persons receiving the *
 * training if they are not conversant in the *
 * English language but are providing direct *
 * patient care. *

* (2) Regulation: (a) monitor the practices *
 * of providers as they impact consumers in the *
 * areas of privacy, sexuality, and sexual orien- *
 * tation; (b) receive, investigate, and remedy *
 * complaints arising from invasions of privacy *
 * and sexual orientation discrimination; and (c) *

REPORT, page 239.

"CREATE INTER-AGENCY
 COMMITTEE"

D. ALCOHOL AND DRUG PROGRAMS

*
 * THE COMMISSION RECOMMENDS that the Department of
 * Alcohol and Drug Programs require state licensed or
 * funded programs to include the following procedures
 * during the initial interview with a prospective
 * client:
 *
 * (a) provide all prospective clients with
 * written information regarding personal rights,
 * and the process for filing complaints should
 * their rights be violated;
 *
 * (b) provide information to all prospective
 * clients about local programs targeted for
 * special groups, including programs for les-
 * bians and gay men.
 *
 * THE COMMISSION FURTHER RECOMMENDS that the Department
 * of Alcohol and Drug Programs should require each
 * state licensed or funded program to provide a private
 * area for client intake interviews. Such an area
 * should accommodate the need for confidentiality while
 * maintaining sufficient safety standards for the in-
 * take interviewer.
 *
 * THE COMMISSION RECOMMENDS that the Department of
 * Alcohol and Drug Programs require that all telephone
 * calls regarding a client's case which involve person-
 * nel at a state licensed or funded program must be
 * documented with the following information: name and
 * position of the caller/receiver and the facility
 * represented; name of person releasing client infor-
 * mation; date; and summary of information released.
 * This safeguard will provide a safety check on the
 * indiscriminate release of personal information con-
 * cerning a client.
 *
 * FINALLY, THE COMMISSION RECOMMENDS that the Depart-
 * ment of Alcohol and Drug Programs study and monitor
 * the assignment and use of client identification num-
 * bers by local ADP-funded agencies. Agencies which
 * assign identification numbers to clients, especially
 * those using computerized systems, should be required
 * to certify annually the security methods which are
 * taken to insure confidentiality and privacy for
 * client information and records.
 *
 * *****

REPORT, page 244.

Also see Supplement Two,
"Report on Privacy in Al-
cohol and Drug Programs."

"PRIVACY IN ALCOHOL AND
DRUG PROGRAMS"

XVI. Immigration

Three years ago, the United States Attorney General wrote a memo to the Acting Commissioner of the Immigration and Naturalization Service:

REPORT, page 362.

. . . Congress has required under §212 of the Immigration and Nationality Act of 1952 . . . the exclusion of homosexual aliens from the United States. Enforcement of the Act's exclusionary provisions is a joint responsibility of the Immigration and Naturalization Service (INS) and the PHS [Public Health Service]. The INS performs examinations other than mental or physical examinations of all arriving aliens . . . and administratively adjudicates the admissibility of aliens in doubtful cases, 8 U.S.C. §1226. Upon referrals from INS officers, the PHS conducts physical and mental examinations of arriving aliens, and certifies "for the information of [INS officers], any physical or mental defect or disease observed" in aliens so examined. Since 1952, the exclusion of homosexual aliens has been enforced both unilaterally by the INS, e.g., relying on an alien's admission of homosexuality, and jointly, subsequent to a certification by the PHS that particular aliens are afflicted with a "mental defect or disease," i.e., homosexuality. . . .

On August 2, 1979, Dr. Julius B. Richmond, Surgeon General of the PHS and Assistant Secretary for Health of the Department of Health, Education and Welfare (HEW), issued a memorandum declaring that "homosexuality per se will no longer be considered [by the PHS] to be a 'mental disease or defect,'" and "the determination of homosexuality is not made through a medical diagnostic procedure," and indicating that INS officers will be advised to stop referring aliens to the PHS for mental examinations solely on the ground of suspected homosexuality.

You have questioned the Surgeon General's authority to make these determinations and have inquired concerning the effect of his memorandum on the enforceability of the Act. For reasons stated below we conclude:

(a) Congress clearly intended that homosexuality be included in the statutory

phrase "mental defect or disease," and the Surgeon General has no authority to determine that homosexuality is not a "mental defect or disease" for purposes of applying the Act;

(b) If the Surgeon General has determined, as a matter of fact, that it is impossible for the PHS medically to diagnose homosexuality, the referral of aliens to the PHS for certification of homosexuality would be unhelpful;

(c) The INS is statutorily required to enforce the exclusion of homosexual aliens, even though the Surgeon General has directed the PHS no longer to assist in this enforcement.

Because the Surgeon General has concurred with the American Psychiatric and Psychological Associations that homosexuality is not a mental defect or disease, the Public Health Service will not participate with the INS in so categorizing lesbians and gay men. The ability of the INS to act on its own in gay-exclusion cases, at least temporarily, has been suspended due to a federal court injunction.

REPORT, page 363.

Memorandum from Surgeon General Julius Richmond, August 2, 1979.

Lesbian/Gay Freedom Day Committee v. INS, cited above.

* THE COMMISSION RECOMMENDS that members of California's congressional delegation support legislation (such as H.R. No. 3524, 97th Congress (1982)) to amend the Immigration and Naturalization Act to indicate that a person's sexual orientation shall be neither a bar to admission nor a ground for exclusion under the Act. Exclusion and deportation of all known lesbians and gay men are not only reminiscent of "McCarthyism" but are inconsistent with the rights of American citizens to associate with lesbians and gay men from around the world. Furthermore, the continuation of this archaic policy detracts from our foreign policies on the subject of human rights. It is hard to rationalize America's "world vision" and international humanitarian concerns when our own domestic policies are riddled with violations of human rights such as the immigration policy under discussion.

REPORT, page 363.

"AMEND IMMIGRATION AND NATURALIZATION ACT"

PART FOUR: CONCLUSION

XVII. Public Policy of the State

The Commission has researched and analyzed hundreds of statutes and court decisions involving various dimensions of privacy. The study of personal privacy is also an ongoing venture for other agencies, groups, and individuals concerned about the encroachment of technology on the right most valued in our modern civilization. Even as the Report of the Commission was being prepared, the body of privacy-related law was expanding with new regulations and interpretations by legislatures and appellate courts in California and throughout the nation.

REPORT, page 433.

The spirit and letter of the law are together reflected in what is often called the "public policy" of the state. This term seems to imply a compilation, accumulation, and synthesis of legal principles, constitutional provisions, statutes, and court interpretations, generously mixed with an historical perspective and a general sense of fairness and justice. As a practical matter, public policy on any specific topic may be discovered in a concrete and systematic way.

Fundamental public policy is declared in the Constitution, and when the Constitution defines specific public policies, such policies must be paramount, although statutes may be to the contrary. For example, inclusion of privacy in the California Constitution as an "inalienable" right and similar provisions in other state constitutions underscore that public policy favors protection of personal privacy in those states.

72 Corpus Juris Secundum, Policy, page 214.

Public policy may also be gleaned from legislative enactments. When the Legislature speaks on a particular subject over which it has the power to legislate, its utterance is the public policy of the state, and such statements are conclusive unless they contravene some constitutional provision.

There are, however, many details not specifically treated either by constitutional provisions or by statutes, and, as to these, the public policy of the state is declared by the court of last resort.

In addressing the definition and scope of public policy, the California Court of Appeal has stated:

The public policy of a state is found in its constitution, acts of the legislature, and decisions of its courts. . . . By the same

Peterman v. International Brotherhood of Teamsters (1959) 174 Cal.App.2d 188, 222.

token, where the federal Constitution and the decisions of the United States Supreme Court are made applicable to the states, the public policy there embodied becomes that of the states.

Officials often rely and depend upon general public policy -- that is, broad principles drawn from the rationale and spirit underlying explicit law -- to guide them when they are confronted with a particular problem not specifically addressed in constitutional provisions or in legislative or judicial precedents. Both in exercising vested discretion and in interpreting general or ambiguous language, decision-makers in the executive and judicial branches of government are properly guided by explicit declarations of public policy contained in constitutional and legislative enactments within the general field, as well as the implicit principles culled therefrom.

REPORT, page 433.

The Commission recognizes from its study and from all of the materials contained in this Report that it is the public policy of the State of California to protect and defend the personal privacy of all its inhabitants and to encourage the elimination of discrimination based upon sexual orientation.

* * *

At its public hearings, the Commission heard testimony regarding a great number of issues involving invasions of privacy and sexual orientation discrimination. Specific recommendations have been made regarding a substantial number of those issues.

Primarily due to its 18-month lifespan, the Commission was unable to address every problem brought to its attention. The Supplements to the Commission's Report, including the Transcript of Public Hearings, are valuable documents in that they explore some specific subjects which the Commission as a whole was unable to research thoroughly. Many of these subjects are deserving of additional study and the problems mentioned worthy of resolution.

The Commission dedicates this Report to those with responsibility for finding solutions to the ever more complex problems faced by people in our multi-faceted society, trusting that justice and wisdom in decision-making may be enhanced by a wider context of knowledge and understanding of existing law and public policy.

Commission on Personal Privacy
December, 1982

APPENDICES TO THE EXECUTIVE SUMMARY

CONFIDENTIAL

APPENDICES TO THE EXECUTIVE SUMMARY

The following information is provided for your information and is not intended to be used as a basis for any action. It is the property of the Department of Defense and is being furnished to you in confidence. It is not to be distributed outside your organization without the express written consent of the Department of Defense.

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[APPENDIX A]

Executive Department
State of California

EXECUTIVE ORDER B74-80

WHEREAS, California must recognize the full human potential of all its citizens as its most valuable resource; and

WHEREAS, to safeguard this human potential, it is necessary to protect the fundamental right to personal privacy against the threat of discrimination for reasons of an individual's sexual orientation, which discrimination contravenes the policy of this State; and

WHEREAS, there exist certain stereotypes relating to sexual minorities which are held in common by many people; and

WHEREAS, stereotypes result in an individual being judged without regard for that individual's own qualities and merits; and

WHEREAS, a study of the problems of sexual minorities and of the adequacy of existing law to protect the personal privacy of all individuals is necessary so that legislative and administrative action and public attitudes may be based upon accurate information, thus encouraging protection of the civil rights of all Californians against arbitrary and unjust discrimination;

NOW, THEREFORE, I, Edmund G. Brown Jr., Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this Order to become effective immediately:

1. There is established the Commission on Personal Privacy. Said Commission shall be composed of not more than twenty-five (25) members representative of the law enforcement, business, labor, and educational communities, as well as other interested groups. The Governor shall appoint not more than fifteen (15) of the members, one of whom shall be designated Chairperson. The Speaker of the Assembly shall appoint not more than five (5), and the Senate Rules Committee shall appoint not more than five (5).
2. Members of the Commission shall serve without compensation but may be reimbursed for their actual expenses. The Commission is authorized to receive and disburse funds which may be available to finance its work.
3. The Commission shall study the problems of discrimination based upon sexual orientation or invasions of the right of personal privacy, in both the public and private sectors, documenting the extent of such problems, exploring in what

Executive Department
State of California

PAGE TWO

forms the problems are manifested, noting existing remedies, and making recommendations for legislative, administrative, and other action where appropriate.

4. A final report of its findings and recommendations shall be submitted by the Commission to the Governor and the Legislature by December 1982. The Commission may issue such interim reports as it deems appropriate.
5. All state agencies, departments, boards, and commissions are hereby directed to assist and cooperate with the commission in carrying out its responsibilities.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 9th day of October, 1980.

/signed/ Edmund G. Brown Jr.
Governor of California

ATTEST:

THE GREAT SEAL
OF THE STATE
OF
CALIFORNIA

/signed/ March Fong Eu
Secretary of State

by /signed/ Michael S. Gagan
Deputy Secretary of State

(APPENDIX B)

OTHER DOCUMENTS PRODUCED BY THE COMMISSION

In addition to the Report and this Executive Summary, other documents have been produced by the Commission on Personal Privacy. Those documents are listed below by title and author. Each of these supplements is available for purchase. For further information, contact: State Personnel Board, Policy and Standards Division, 801 Capitol Mall, Sacramento, CA 95814 / (916) 445-3721 - ATSS 485-3721.

Supplement One:

This supplement document contains topical reports and surveys that pertain to sexual orientation discrimination or alternate family relationships. Authors and titles of these materials are listed below:

Title: Recognizing Sexual Orientation and Gay People Within the Secondary Curriculum: What Role for Schools?

Author: Dickson J. Hingson, Ph.D.

Title: Report of the Committee on Family Relationships

Author: Ellen McCord

Title: California Tax Laws and Alternate Families

Author: Pat Wakayama

Title: "Family" and "Household" Use Survey: How Government Agencies Use These Terms in Operating Their Programs

Author: Conducted by the Institute for Local Self Government and Menkin-Lucero & Associates for the State Personnel Board

Title: Discrimination Against Lesbians and Gay Men in Private Employment

Author: Donna J. Hitchens and Linda Barr, Lesbian Rights Project

Title: Child Custody Disputes and the Homosexual Parent

Author: Commissioner Roberta Bennett

Title: Sexual Harassment in State Employment

Author: Pat Wakayama

Title: Sexual Harassment Survey of State Government Employers

Author: Conducted by the Institute for Local Self Government and Menkin-Lucero & Associates for the State Personnel Board

Supplement Two:

This supplemental document contains topical reports and surveys that pertain to privacy in medical and mental health services, as well as issues of particular concern to elderly and disabled persons. Authors and titles of these materials are listed below:

Title: Report of the Committee on Aging and Disability
Author: Commissioner Nora J. Baladerian

Title: Report of the Task Force on Aging
Author: Commissioner Nora J. Baladerian

Title: Privacy Rights in Alcohol and Drug Programs
Author: Kieran Prather and Mike Cronen

Title: Continuing Sex Education for Physicians
Author: Commissioner Wardell B. Pomeroy, Ph.D.

Title: Personal Privacy and Hospital Visitors
Author: Commissioner Audrey Mertz, M.D.

Title: Survey and Report on Privacy in Medical and Mental Health Care in State Facilities
Author: Martha O. Acevedo

Supplement Three:

This supplemental document contains topical reports and surveys that pertain to government information policies and practices. Authors and titles of these materials are listed below:

Title: Annotated Subject Index to California Informational Privacy Statutes
Author: Commissioner Gary Cooper and Ms. Diane Josephs

Title: Department of Motor Vehicles File Systems and Client Personal Privacy
Author: Richard Donohoe

Title: Invasion of Juror Privacy: Survey and Report on the Jury Systems in California's Municipalities
Author: Commissioner Godfrey D. Lehman

Title: The Unconstitutionality of Voir Dire, Peremptory Challenges and Jury Books in Jury Selection
Author: Commissioner Godfrey D. Lehman

Title: Report of The Corrections Committee (with Appendix on The Family Visiting Program in California Institutions by Martha O. Acevedo)
Author: Commissioner Lester Pincu, D.Crim.

Supplement Four:

Transcript of Public Hearings conducted by the Commission on Personal Privacy. See Table of Witnesses at Public Hearings, Appendix C, below.

(APPENDIX C)

LOS ANGELES PUBLIC HEARING -- FRIDAY, NOVEMBER 13, 1981

**

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EDITH BERG Federation of Feminist Women's Health Centers, Los Angeles, CA	PERSONAL PRIVACY: Surveillance of Health Centers by State Agencies	LA/88
RALPH BOCHES, Esq. Hollywood Youth Defense and Research Association, Hollywood, CA	PERSONAL PRIVACY: Criminal Law; Age-of-Consent Laws; Decriminalization of Prostitution	LA/83
DANIEL BRZOVIC, Esq. Western Law Center for the Handicapped, Los Angeles, CA	PERSONAL PRIVACY: Rights of the Disabled; Marriage Penalty in Benefits Programs	LA/80
VIRGIL CARPENTER Los Angeles County Dept. Mental Health Services, Patient's Rights Section, Los Angeles, CA	PERSONAL PRIVACY: Patient's Rights; Confidentiality of Records and Mail; Privacy Rooms; Private Communications; Searches	LA/30
TIM CURRAN Student, U.C.L.A., West Los Angeles, CA	SEXUAL ORIENTATION DISCRIMINATION: Dismissal by Boy Scouts of America Organization	LA/96
DOCTOR "D" Los Angeles, CA	SEXUAL ORIENTATION DISCRIMINATION: Adoption of Children	LA/47
E.H. DUNCAN DONOVAN A.C.L.U., Gay Rights Chapter, Los Angeles, CA	PERSONAL PRIVACY: Criminal Law; Registration of Sex Offenders in California	LA/102
JIMMY E. Los Angeles, CA	PERSONAL PRIVACY: Rights of Disabled; Marriage Penalty in Benefits Programs	LA/79

EXECUTIVE SUMMARY

CALIFORNIA COMMISSION ON PERSONAL PRIVACY

FERNANDO GARCIA, Esq. California Department of Fair Employment & Housing, Los Angeles, CA	SEXUAL ORIENTATION DISCRIMINATION: Housing Discrimination; Unruh Act Amendment; DFEH Policies	LA/21
CECILY GREEN International Professional Surrogates Foundation, Studio City, CA	PERSONAL PRIVACY: Sexuality and Disability; Medical Assistance/Benefits Programs	LA/32
HAROLD GREENBERG, Esq. Los Angeles, CA	SEXUAL ORIENTATION DISCRIMINATION: Criminal Law Problems; Enforcement; Sex Registration; Professional Licensing	LA/17
DAVID HALL Community Health Educator, Los Angeles, CA	PERSONAL PRIVACY: Sex Education for Youth	LA/83
WILLIAM HANDEL, Esq. Surrogate Parent Foundation, No. Hollywood, CA	PERSONAL PRIVACY: Surrogate Parenting	LA/4
ROBERT HENDERSON Private Citizen, Simi, CA	PERSONAL PRIVACY: Employment Discrimination Because of Marital Status	LA/91
Rev. ROBERT H. ILES Episcopal Priest and Instructor/Counsellor, Pasadena, CA	PERSONAL PRIVACY: Sex Education for Youth	LA/24
STEVE KELBER, Esq. West Hollywood, CA	SEXUAL ORIENTATION DISCRIMINATION: Inheritance and Estate Tax; Housing	LA/41
JAMES LONG Consultant, Calif. Dept. of Mental Health, Los Angeles, CA	SEXUAL ORIENTATION DISCRIMINATION: Employment Discrimination; Public Assistance Programs	LA /110
CHRISTINE MASTERS, Esq. United States Government, Equal Employment Opportunity Commission, Los Angeles, CA	PERSONAL PRIVACY: Sexual Harassment in Employment	LA/38
RICK MARTIN California Association for the Physically Handicapped, Los Angeles, CA	SEXUAL ORIENTATION DISCRIMINATION: Military Exclusion and Investigation; Disabled; Aging	LA/53

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CALIFORNIA COMMISSION ON PERSONAL PRIVACY

SUSAN MCGRIEVEY, Esq. Staff Attorney, A.C.L.U., Los Angeles, CA	SEXUAL ORIENTATION DISCRIMINATION: Use of Polygraphs by Law Enforcement Agencies in Screening Employment Applicants	LA/66
Dr. SHARON RAPHAEL Prof. Sociology/Gerontology, Cal State University, Dominguez Hills, CA	SEXUAL ORIENTATION DISCRIMINATION: Problems of Older Lesbians/Gay Men	LA/58
BETTY R. Los Angeles, CA	PERSONAL PRIVACY: Rights of Disabled; Marriage Penalty in Benefits Program	LA/79
MINA ROBINSON Gerontologist, Orange County, CA	SEXUAL ORIENTATION DISCRIMINATION: Problems of Older Lesbians/Gay Men	LA/62
BERNARD SHERWIN, Esq. Surrogate Parent Foundation, No. Hollywood, CA	PERSONAL PRIVACY: Surrogate Parenting	LA/5
DONNA SMITH Los Angeles, CA	SEXUAL ORIENTATION DISCRIMINATION: Problems of Older Lesbians/Gay Men	LA/55
S. THOMAS TODD, Esq. Van Nuys, CA	SEXUAL ORIENTATION DISCRIMINATION: Employment Benefits Discrimination	LA/11
JOHN VANDURIS Geneologist, United Lesbian and Gay Christian Scientists, Los Angeles, CA	SEXUAL ORIENTATION DISCRIMINATION: Discriminatory Policies and Practices of Churches	LA/107
HAROLD W. Los Angeles, CA	SEXUAL ORIENTATION DISCRIMINATION: Criminal Law; Sex Registration for Disorderly Conduct; Discriminatory Enforcement	LA/114

* * *

SAN FRANCISCO PUBLIC HEARING -- FRIDAY, NOVEMBER 20, 1981

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STEVE BLOCK Lecturer, Law School, U. of C. Berkeley, CA	PERSONAL PRIVACY: Definition and Scope of Privacy	SF/146
PATTY BLOMBERG Family-Life Coordinator, Dept. of Developmental Svcs., Sacramento, CA	PERSONAL PRIVACY: Sexual Rights of the Disabled	SF/61
BARBARA BLOOM "Centerforce", San Quentin, CA	PERSONAL PRIVACY: Prison Family Visiting Program and Discrimination Against Alternate Families	SF/129
SUSAN CRONENWETT Program Specialist, Unified School District, Sacramento, CA	PERSONAL PRIVACY: Sex Education in the Secondary School System	SF/116
LAWRENCE CRUZ Director, "Esperanze House", San Francisco, CA	SEXUAL ORIENTATION DISCRIMINATION: Sexual Minority Youth	SF/158
JAMES A. EMBREE Superintendent, Preston School of Industry, Calif. Youth Authority, Ione, CA	PERSONAL PRIVACY: Audio Surveillance of Juvenile Wards; Visual Surveillance by Opposite-Sex Guards	SF/26
ROBERT FORMICHI Reporter of Decisions, Supreme Court of California, San Francisco, CA	PERSONAL PRIVACY: Appellate Opinions and Use of Litigants' Initials	SF/68
JAMES FOSTER Special Consultant to the Chairman, Democratic National Committee, San Francisco, CA	PERSONAL PRIVACY: Alternate Families and Tax Discrimination	SF/44

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DONNA HITCHENS, Esq. Lesbian Rights Project, San Francisco, CA	SEXUAL ORIENTAION DISCRIMINATION: Employment; Child Custody	SF/63
DORRWIN JONES Gerontologist; Exec. Director of "Meals on Wheels of San Francisco, Inc.", San Francisco, CA	SEXUAL ORIENTATION DISCRIMINATION: Aging and Personal Privacy Problems	SF/149
JUSTIN KEAY Manager, California Office of Information Practices, Sacramento, CA	PERSONAL PRIVACY: Informational Privacy and Government Records	SF/124
SUSAN KNIGHT Director, U. of C. Program: Sex and Disability, San Francisco, CA	PERSONAL PRIVACY: Sexuality and Disability	SF/55
ARTHUR LAZERE, C.P.A. President-Elect, Nat'l Assn. Business Councils, San Francisco, CA	SEXUAL ORIENTATION DISCRIMINATION: Employment and Professional Licensing	SF/11
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THOMAS MEYER, Esq. Regional Counsel, National Jury Project, Oakland, CA	PERSONAL PRIVACY: Investigation and <u>Voir Dire</u> of Prospective Jurors	SF/101
CAROL MIGDEN Exec. Dir., Operation Concern, Pacific Medical Center, San Francisco, CA	SEXUAL ORIENTATION DISCRIMINATION: Psychiatric Health Care for Lesbians and Gay Men	SF/80
Hon. MARY MORGAN Judge, Municipal Court, San Francisco, CA	SEXUAL ORIENTATION DISCRIMINATION: Child Custody	SF/5
PAT NORMAN Coordinator, Gay/Lesbian Health Svcs., Dept. of Public Health, San Francisco, CA	SEXUAL ORIENTATION DISCRIMINATION: Health Services for Lesbians and Gay Men	SF/81

Dr. WILLIAM PAUL Task Force on Sexual Orientation, American Psychological Assn., San Francisco, CA	SEXUAL ORIENTATION DISCRIMINATION: Educational Problems and Social Costs	SF/154
DAVID PAYNE Student, Stanford University, Stanford, CA	PERSONAL PRIVACY: Informational Privacy and Draft Registration	SF/85
WILLIAM PETROCELLI, Esq. Author of <u>Law Profile</u> (McGraw-Hill, 1982), San Francisco, CA	PERSONAL PRIVACY: Privacy	SF/85
ANTHONY SILVESTRE Chairperson, Governor's Council on Sexual Minorities, Harrisburg, Pennsylvania	SEXUAL ORIENTATION DISCRIMINATION: Need for Implementation Mechanisms for Privacy Commission's Report to be Effective	SF/133
DANIEL R. SIVIL House Civil Rights Committee Task Force on Family & Sexuality, Detroit, Michigan	SEXUAL ORIENTATION DISCRIMINATION: Aging and Nursing Home Protections	SF/138
DON SPECTOR, Esq. Prison Law Office, San Quentin, CA	PERSONAL PRIVACY: Prisoner's Privacy	SF/49
LEO SPIEKERMAN Manager, Legislative Affairs, TRW Information Services, Los Angeles, CA	PERSONAL PRIVACY: Informational Privacy; Credit Reporting Services	SF/15
KEVIN WADSWORTH Private Citizen, San Francisco, CA	SEXUAL ORIENTATION DISCRIMINATION: Political Discrimination Against Lesbians and Gay Men	SF/152
Dr. ARTHUR WARNER Chairperson, National Committee for Sexual Civil Liberties, Princeton, New Jersey	PERSONAL PRIVACY: Decriminalization of Private Sexual Conduct; National Overview	SF/141
WILLIAM WELLS Program Administrator, Intensive Treatment Program, Preston School of Industry, Ione, CA	PERSONAL PRIVACY: Psychiatric Treatment of Wards	SF/39
JUDY WILLIAMS Coordinator, Program for Education/Rehabilitation of Hearing-Impaired, Sonoma Developmental Center, Sonoma, CA	PERSONAL PRIVACY: Sex Education for Developmentally Disabled Clients	SF/75

[APPENDIX D]

RECOMMENDATIONS -- LISTED BY ADDRESSEE

	EXECUTIVE SUMMARY	COMMISSION REPORT
<u>UNITED STATES</u>		
Executive/Administrative Branch:		
PRESIDENT:		
Request President to Establish Task Force and Council	47	68
DEPARTMENT OF HEALTH AND HUMAN SERVICES:		
Eliminate Regulation of State Family Planning Programs	91	296
Legislative Branch:		
CALIFORNIA'S CONGRESSIONAL DELEGATION:		
Congressional Hearings on Sexual Orientation Discrimination	41	354
Amend Federal Privacy Act	46	62
National Privacy Projects	46	64
Establish Federal Privacy Board	47	65
Request President to Establish Task Force and Council	47	68
Eliminate Marriage Penalties in Benefits Programs	100	243
Amend Immigration and Naturalization Act	107	363
<u>STATE OF CALIFORNIA</u>		
Executive/Administrative Branch:		
GOVERNOR:		
Request President to Establish Task Force and Council	47	68
Executive Order Regarding Committee on Privacy in Health Care	103	239
ATTORNEY GENERAL:		
Chair, Local Government Committee Seek Attorney General Opinion on Discrimination	80	412

STATE CONTROLLER:

Propose Amendment to Tax Laws for Alternate Families	89	295
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BOARD OF EDUCATION:

Notify Local Districts Regarding Employment Discrimination	73	423
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BOARD OF GOVERNORS OF CALIFORNIA COMMUNITY COLLEGES:

Update of College/University Employment Policies	73	422
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BOARD OF REGENTS OF UNIVERSITY OF CALIFORNIA:

Update of College/University Employment Policies	73	422
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COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING (P.O.S.T.):

Certified Programs and Materials on Violence	66	384
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Equal Employment Opportunity Standards	71	421
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COMMISSION FOR TEACHER PREPARATION AND LICENSING:

Non-discrimination Statement From Credentials Committee	73	423
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DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS:

Privacy in Alcohol and Drug Programs	105	244
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DEPARTMENT OF CONSUMER AFFAIRS:

Credit Bureau Permits	85	258
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Require Health Care Provider Privacy Training	104	240
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DEPARTMENT OF CORRECTIONS:

Privacy in Correctional Facilities	61	177
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Training for Staff in Youth Institutions	92	297
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DEPARTMENT OF DEVELOPMENTAL SERVICES:

Training for Staff in Youth Institutions	92	297
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Annual Patients' Rights Reviews	100	243
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DEPARTMENT OF EDUCATION:

Booklet on Myths about Homosexuality	40	339
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Develop Library Censorship Policies	57	74
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Mandate Sex Education	91	297
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING:		
Jurisdiction in Sexual Orientation Cases	81	412
Update Literature on Housing Jurisdiction	85	431
Educational Projects in Housing Unit	83	431
Exercise Jurisdiction in Renters-With-Children Cases	84	432
DEPARTMENT OF HEALTH SERVICES:		
Add Patients' Rights Protections to Administrative Code	97	241
Annual Patients' Rights Reviews	100	243
Require Privacy Training for Health Care Staff	104	240
DEPARTMENT OF JUSTICE:		
Police Officer Training Regarding Victims of Violence	66	384
DEPARTMENT OF MENTAL HEALTH:		
Training for Staff in Youth Institutions	92	297
Add Patients' Rights Protections to Administrative Code	97	241
Annual Patients' Rights Reviews	100	243
Require Privacy Training for Health Care Staff	104	240
DEPARTMENT OF REHABILITATION:		
Annual Patients' Rights Reviews	100	243
DEPARTMENT OF SOCIAL SERVICES:		
Training for Staff in Youth Institutions	92	297
Add Patients' Rights Protections to Administrative Code	97	241
Annual Patients' Rights Reviews	100	243
Require Privacy Training for Health Care Staff	104	240
FAIR EMPLOYMENT AND HOUSING COMMISSION:		
Advisory Council on Sexual Orientation Discrimination	84	432

LABOR COMMISSIONER:		
Create Task Force on Private Sector Privacy	76	254
STATE PERSONNEL BOARD:		
Training for County Personnel Officers	72	421
New Executive Officer Memo to All Agencies	79	408
Monitor and Audit All Agencies	80	408
Authorize Funds for Full-Time Sexual Orientation Position	80	408
SUPERINTENDENT OF PUBLIC INSTRUCTION:		
Notify Local Districts Regarding Employment Discrimination	73	423
TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY SYSTEM:		
Update of College/University Employment Policies	73	422
YOUTH AUTHORITY:		
Privacy in Correctional Facilities	61	177
Training for Staff in Youth Institutions	92	297
Legislative Branch:		
LEGISLATURE:		
Amend Law on Causes and Cures of Homosexuality	42	367
Request President to Establish Task Force and Council	47	68
Amend Privacy Act to Cover Local Government	49	280
Create Privacy Advisory Council and Research Center	50	281
Amend Civil Discovery Statutes	54	150
Repeal Law on Seizure of Juror Candidates	57	290
Police Surveillance of Private Residences	58	172
Police Surveillance of Lawful Activity	59	181
Confidentiality of Telephone Conversations	59	207
Surveillance of Restrooms and Dressing Rooms	60	193
Privacy in Correctional Facilities	61	177

Repeal Certain Loitering Statutes	63	270
Modify Sex Registration Statute	63	269
Age of Consent for Private Sexual Conduct	64	208
Limit Access to Some Arrest Records	64	282
Sealing of Records for Innocent Arrestees	65	283
Amend Anti-Violence Statute	66/67	385
Limits on Use of Polygraphs in Employment	69	253
Amend Fair Employment Practices Act	76	426
Amend Labor Code to Protect Privacy	76	255
Amend Fair Employment and Housing Act	81	412
Add "Sexual Orientation" to Housing Laws	83	431
Indicate Agency Jurisdiction in Unruh Civil Rights Act	83	431
Amend Consumer Credit Reporting Agencies Act	85	258
Regulate Renter Reporting Services	85	260
Amend Insurance Code to Increase Damages for Violations	86	267
Amend Insurance Code to Provide Stricter Limits on Lenders	87	268
Regulate Electronic fund Transfer Systems	88	262
Declaration of Family Status	89	127
Amend Tax Laws for Alternate Families	89	295
Repeal Sex Education Provision	91	297
Amend Durable Power of Attorney Act for Medical Purposes	94	216
Freedom of Patient Choice in Visitations	95	221
Redefine Patient's Family	96	225
Amend Patients' Rights Statutes	97	238
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Increase Damages for Violation of Patient Confidentiality Laws	10	229

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Chair, Local Government Committee Seek Attorney General Opinion on Discrimination	80	412
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JUDICIAL COUNCIL:		
Use of Initials in Appellate Opinions	55	288
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Police Officer Training Regarding Victims of Violence	66	384
No Repercussions Regarding Employees Sexual Orientation	71	416
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Education Regarding Employment Discrimination	72	421
YOUTH AND ADULT CORRECTIONAL FACILITIES:		
Privacy in Correctional Facilities	61	177
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CALIFORNIA LIBRARY ASSOCIATION:		
Develop Library Censorship Policies	57	74
THE PRESS:		
Limit Access to Some Arrest Records	64	282

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