

---

# SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

---

<b>Bill No:</b>	SB 677	<b>Hearing Date:</b>	April 26, 2017
<b>Author:</b>	Moorlach		
<b>Version:</b>	March 23, 2017		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Lynn Lorber		

**Subject:** California Community Colleges: prohibited acts: electronic listening or recording devices

## SUMMARY

This bill allows a person to use an electronic listening or recording device in a California Community College classroom without the consent of the instructor if the person reasonably believed that he or she was recording activities that violate state or federal law or regulation, or local policy. This bill also prohibits a person acting on behalf of a higher educational institution from preventing a student from disclosing, or retaliating against a student for disclosing, information to a government or law enforcement agency and other entities if the student has reasonable cause to believe that the information discloses a violation of law.

## BACKGROUND

Existing federal law prohibits Congress from making any law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. (First Amendment to the United States Constitution)

Existing state law:

- 1) Provides that every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. Existing law prohibits a law from restraining or abridging liberty of speech or press. (California Constitution, Article I, Section 2)
- 2) Prohibits the Regents of the University of California, the Trustees of the California State University, the governing board of a community college district, and an administrator of any campus of those institutions, from making or enforcing a rule subjecting a student to disciplinary sanction solely on the basis of conduct that is speech or other communication that, when engaged in outside a campus of those institutions, is protected from governmental restriction. (Education Code § 66301)
- 3) Provides that #1 and 2 do not prohibit an institution from adopting rules and regulations that are designed to prevent hate violence from being directed at students in a manner that denies them their full participation in the educational process, if the rules and regulations conform to standards established by the

First Amendment to the United States Constitution and Section 2 of Article I of the California Constitution for citizens generally. (EC § 66301 and § 94367)

- 4) Prohibits the use by any person, including a student, of any electronic listening or recording device in any classroom without the prior consent of the instructor, except as necessary to provide reasonable auxiliary aids and academic adjustments to disabled students. (EC § 78907)

## ANALYSIS

This bill:

- 1) Exempts a person from the prohibition against using an electronic listening or recording device in a classroom without the consent of the instructor if the person, including a student, reasonably believed that he or she was recording activities in the classroom that violate state or federal law or regulation, or applicable local agency policy.
- 2) Prohibits a community college district or campus from prohibiting or limiting the use of a recording that is subject to the exception in a disciplinary action against an instructor.
- 3) Prohibits an administrator, professor, teacher or other faculty member, or any other person acting on behalf of a higher education institution from doing any of the following:
  - a) Preventing a student from disclosing information to a government or law enforcement agency, to a person with authority over the student or another employee who has authority to investigate, discover, or correct the violation or non-compliance, or to the media or social media, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the student has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or non-compliance with a local, state, or federal rule or regulation, or applicable local agency policy.
  - b) Retaliate against a student for disclosing information, or because he or she believes that the student disclosed or may disclose information, to entities or individuals described above if the student has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or non-compliance with a local, state, or federal rule or regulation, or applicable local agency policy.
  - c) Retaliate against a student for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or non-compliance with a local, state, or federal rule or regulation, or applicable local agency policy.

- d) Retaliate against a student for having exercised his or her rights pursuant to this bill at any other higher education institution.
  - e) Retaliate against a student because the student is a family member of a person who has, or is perceived to have, engaged in any acts protected by this bill.
- 4) Provides that a disclosure of information includes a report made by a student of a higher education institution to an administrator, professor, teacher or other faculty member, or any other person acting on behalf of the institution.
  - 5) Provides that, in addition to other penalties, an administrator, professor, teacher or other faculty member, or any person acting on behalf of a higher education institution is liable for a civil penalty of up to \$10,000 for each violation of this bill.
  - 6) Provides that this bill does not apply to actions by an administrator, professor, teacher or other faculty member, or any other person acting on behalf of a higher education institution against a student who violates confidentiality of the lawyer-client privilege, or the physician-patient privilege, or who discloses trade secret information.

## STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “The Education Code prohibits the recording of classroom activity. It was recently used to protect an instructor who was publicly shaming students and to punish the student who attempted to bring transparency to the situation. This ‘no recording’ law goes too far when it attempts to silence the truth. SB 677 would ensure that students who witness activities in the classroom which violate state or federal law or regulation and/or a local agency policy are free to document and report the situation to the necessary authorities or to the media, including social media. In an educational environment, students should feel the freedom to question their instructors – and even more so, should be protected when they seek to expose activities which violate laws or school policies. SB 677 is patterned after the whistleblower protection given to employees in the workplace, which are some of the best protections in the nation. Just as employees must feel free to document and report violations in the workplace, students must be given the same protection and freedom to ensure that professors and administrators are not using their authority to silence those with differing opinions.”
- 2) ***Recording in college classrooms.*** This bill seeks to address situations that were recently in the news, where students at two California public postsecondary institutions video recorded their instructors making statements against the current President of the United States and in favor of gun control; apparently the students believed such statements violated either a law of campus policy and posted the videos online to draw attention to those events. It is unclear if those students also notified the campus administration.

Could this bill restrict instructors from speaking freely in their classrooms, even to engage students in spirited discussion that is meant to spark critical thinking?

Could the privacy of other students who may be in a video recording be violated?

- 3) ***Whistleblower protections.*** This bill prohibits an administrator, professor, teacher or other faculty member, or any other person acting on behalf of a higher education institution from preventing a student from disclosing information to a government or law enforcement agency, to a person with authority at the college or university, or to the media or social media, *if the student has reasonable cause to believe* that the information discloses a violation of laws or policies. This bill also prohibits retaliation against a student for disclosing information. Existing law provides individuals with the right to provide information to a government or law enforcement agency, and prohibits retaliation for such. If a student has reasonable cause to believe that a violation of laws or policies has occurred, a student should contact a government or law enforcement agency; it is unclear why violations of law would be reported to the media or social media.
- 4) ***Heard by the Senate Judiciary Committee.*** This bill is being heard in the Senate Judiciary Committee on April 25, one day prior to the scheduled hearing in this Committee. Presumably, the Senate Judiciary Committee will consider issues related to whistleblower protections, First Amendments rights, privacy rights, the standard of having reasonable cause, and the civil penalty provisions of this bill.

## SUPPORT

None received

## OPPOSITION

Academic Senate of the California State University  
California Faculty Association  
California Federation of Teachers  
California Scholars for Academic Freedom  
California Teachers Association  
Faculty Association of California Community Colleges

-- END --