Chapter One

The Evolution of Civil Rights for Girls and Women in California

Introduction: Public Education, the Right to Vote, the ERA and Property Rights

Early struggles involving women's civil rights in the United States and California were waged over the right to a public education, the right to vote and the right of women, particularly married women, to control and manage property. Suffragists in the 19th century argued for all these rights. By 1900, 98 percent of public high schools were coed.[3]

Women achieved the right to vote in California in 1911. By 1920 all the states had ratified the 19th Amendment to the U.S. Constitution securing voting privileges for *all* U.S. citizens.

Many suffragists such as Alice Paul were also pushing for the passage of an Equal Rights Amendment (ERA) to the U.S. Constitution when the 19th Amendment passed. But the chance to ratify the ERA did not come until 1972. That effort at state ratification fell three states short in 1982 after 35 states, including California, voted for it.

In the 1960s, with the advent of the modern-day civil-rights movement and a renewed push for women's rights, came not only the revived effort for an ERA, but also many state and national reforms affecting women's equality.

Congress passed the Equal Pay Act of 1963 and the Civil Rights Act of 1964 barring employment discrimination on the basis of race, color, religion, sex, or national origin. Sex discrimination was included by Representative Howard Smith from Virginia as a way to derail the bill. His efforts were unsuccessful and the groundbreaking Civil Rights Act of 1964 became law. Another

[3] "Education and Gender," *The CQ Researcher*, June 3, 1994, Vo. 4, No. 21.

pivotal measure passed in 1972 when Title IX, barring sex discrimination in education, was enacted.

Men's historical dominance over women in owning and controlling real and personal property is rooted in the English common-law tradition that the husband is the head of the family and the wife and children are subordinate to him. Although the California Constitution adopted in 1849 guaranteed community property and separate property rights to the wife, the Legislature in 1850 severely restricted these rights by statute. The husband was given unlimited managerial control of the community property and managerial control of the wife's separate property. Over the course of the next century, legislative efforts focused on giving the wife control over her separate property and more of a say in the control of community property. Finally in 1974, Senator Mervyn Dymally successfully authored legislation (SB 569 and SB 570) giving both spouses equal management and control of community property in marriage, divorce and death.[4]

This chapter focuses on recent laws that protect the rights of girls and women in areas ranging from education to insurance. Two good sources for an overview of both state law and complementary federal laws are the publications *Women's Rights Handbook (1998)* and *Unlawful Discrimination, Your Rights and Remedies, Civil Rights Handbook (1990)* published by the state Attorney General's Office.

Education: California Passes Title IX Law in 1982

In 1982, California enacted a state measure similar to the federal Title IX law (AB 3133, Mike Roos, Chapter 1117). This law is commonly known as the California Sex Equity in Education Act (SEEA).

SEEA bars sex discrimination in all educational institutions that receive or benefit from state financial assistance or enroll students who receive state financial aid. It covers preschools through universities – both public and private institutions. The areas of coverage are similar to the federal Title IX law and include academic, extracurricular, research, occupational training programs, sexual harassment, athletics and employment. SEEA applies to students, non-students, and academic and non-academic personnel.[5]

[4] *Community Property in California*, Grace Ganz Blumberg, 3d ed., Aspen, 1999.
[5] Education Code Sections 200 and following.

SEEA is the major California law prohibiting sex discrimination in education, but Figure 1 also summarizes a number of other key laws related to education equity. Chapter Two, "Education Equity for Girls and Women: Today's Schoolgirls May Cure Tomorrow's Epidemics," includes a more in-depth discussion of education-equity laws and the social changes related to education that have taken place in recent decades.

Figure 1
Major Education-Equity Laws in California

Year	Bill, Chapter #	Author	Description
1973	AB 2187, Ch. 571	Ken Cory	Prohibits sexual bias in instructional materials.
1975	AB 1559, Ch. 789	Michael Wornum	Requires equality in participation and funding for high school athletic programs.
1975	AB 1558, Ch. 838	Floyd Mori	Encourages equal opportunities in athletics at CSU. (Funding equality and annual report repealed by 1995 legislation sponsored by Assembly Committee on Higher Education, AB 446, Ch 758.)
1982	AB 3133, Ch. 1117	Mike Roos	Sex Equity in Education Act (SEEA) bars sex discrimination in education.
1984	SB 2252, Ch. 1371	Milton Marks	Clarifies that sexual harassment is covered by SEEA.
1993	AB 1476, Ch. 1123	Jackie Speier	Requires the California Department of Education (CDE) to annually review 20 school districts for compliance with sex discrimination laws and make data available by gender.
1998	AB 499, Ch. 914	Sheila Kuehl	Clarifies remedies for discrimination in education.

California Employment Protection Laws Related to Gender

From equal pay for equal work to hiring and firing decisions to attire in the workplace, the California workplace and the laws governing it have evolved to create a more gender-neutral environment. The following figure summarizes the benchmark employment-protection laws enacted in California.

Figure 2
Benchmark Employment-Discrimination Laws Related to Women's Rights

Year	Bill, Chapter #	Author	Description
1970	AB 22, Ch. 1508	Charles Warren	Adds sex to the law prohibiting employment discrimination.
1976	SB 1642, Ch. 1195	David Roberti	Adds marital status to the law prohibiting employment discrimination.
1978	AB 1960, Ch. 1321	Howard Berman	Adds pregnancy to the law prohibiting employment discrimination.
1982	AB 1985, Ch. 1193	Patrick Johnston	Explicitly adds sexual harassment to the Fair Employment and Housing Act (FEHA).
1991	AB 77, Ch. 463	Gwen Moore	Adds family leave to the FEHA.
1994	SB 1288, Ch. 535	Charles Calderon	Allows women to wear pants to work except where uniforms are required or other "good cause" is shown.
1994	AB 2590, Ch. 1290	Delaine Eastin	Allows a 40-hour-per-year leave to parents or guardians for attending school activities.

The California Legislature has also addressed less easily regulated forms of potential sex discrimination in employment with legislation dealing with "comparable worth" or "pay equity" and the "glass ceiling." For a more in-depth discussion of employment discrimination laws see Chapter Three of this report, "Pursuing Fair Treatment in the Legislature: Rosie the Riveter May Move into Management."

Sex Discrimination Barred in Business Establishments in 1974

Gender was first added as a protected category to the 1959 Unruh Civil Rights Act in 1974 (SB 1380, Nick Petris, Chapter 1193). The Unruh
Act now bars discrimination based on sex, race, color, religion, ancestry, national origin, age, disability, personal characteristics, and categories previously recognized by case law established by the courts, such as sexual orientation, in all business establishments providing services, goods or accommodations to the public.

Whether Private Clubs and Organizations Qualify as "Business Establishments"

Once gender was added to the Unruh Act, the opportunity to challenge the exclusion of women from some private clubs and organizations arose. The courts have generally found that service clubs such as the Rotary Club cannot exclude women under the Unruh Act.[6] And golf and country clubs that regularly sell non-members time on the golf courses or meals in the dining rooms are business establishments under the Unruh Act and cannot exclude women.[7]

But the Boy Scouts of America is not considered a "business establishment" with regard to its membership policies under *Curran v. Mt. Diablo Council of the Boy Scouts of America.*[8] A case pending before the California Court of Appeal will answer whether the Boy Scouts can exclude girls.[9] Based on the *Curran* decision, the court is almost certain to allow the exclusion of girls from the Boy Scouts.

Gender Discrimination in Housing Outlawed in Mid-1970s

The Unruh Act has been interpreted to prohibit arbitrary discrimination in the sale or rental of housing accommodation. As mentioned above, gender was first added to the Unruh Act in 1974 legislation authored by Senator Nick Petris (SB 1380, Ch 1193).

Housing discrimination is also disallowed under the Fair Employment and Housing Act. Gender and marital status were

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6 *Rotary Club International v. Rotary Club of Duarte,* 481 U.S 537 (1987).
7 *Warfield v. Peninsula Gold & Country Club,* 10 Cal. 4th 594 (1995).
8 *Curran v. Mt. Diablo Council of the Boy Scouts of America,* 17 Cal. 4th 670 (1998).
9 *Yeaw v. Boy Scouts of America,* pending CA District Court of Appeal.

added to this act in 1975 legislation also authored by Senator Petris (SB 844, Ch 1189).

Financial Discrimination in Housing Disallowed in 1977

The Housing Financial Discrimination Act or the Holden Act prohibits financial institutions from providing or denying financial assistance based on factors such as race, religion, sex, or marital status. This law has always included gender and marital status since it was first enacted in 1977. Senator Nate Holden was the author of SB 7, Chapter 1140.

Credit Protections Added in the 1970s

Married or single women became entitled to have credit accounts in their own names after Senator Alfred Song authored two bills on the subject:

- SB 97 (Song), Chapter 101, 1971;
- SB 2163 (Song), Chapter 1252, 1974.

In a series of three bills in the 1970s, the Legislature adopted a section called, "Credit Transactions Regarding Women." This section (Civil Code section 1812.30) prohibits lenders and credit sellers from discriminating on the basis of an applicant's sex or marital status. The three bills were:

- AB 312 (Henry Waxman), Chapter 999, 1973;
- AB 181 (Howard Berman), Chapter 332, 1975;
- AB 3678 (Howard Berman), Chapter 1361, 1976.

Gender-Based Pricing Prohibited in 1995

In 1995, Assemblymember Jackie Speier successfully authored AB 1100, Chapter 866. This law prohibits business establishments from discriminating based on a person's gender in the prices charged for services of a similar or like kind. For instance, dry cleaners cannot legally charge women more than men to launder shirts of the same size and requiring the same procedures. Price differences are allowed when the amount of time, difficulty or cost of providing services varies. The law specifically allows for civil damages of at least $1,000 or three times the amount of the actual damages, plus attorney's fees.

Professional Services

Licensed professionals such as doctors, dentists, psychologists, architects and lawyers may not discriminate in providing services and are subject to disciplinary action if discrimination occurs. Gender was a protected group under the original law (AB 1774, Chapter 1350) that was authored in 1974 by Assemblymember Julian Dixon. In 1980, marital status was added to this law by AB 2244, Chapter 191, authored by then-Assemblymember Teresa Hughes.

Julian Dixon also authored legislation to prohibit licensing boards from requiring examinations and qualifications that adversely impact any group because of sex or race (AB 1495, Chapter 1338, 1978).

Sexual harassment by licensed professionals is prohibited under a 1994 amendment to the Unruh Act (SB 612, Chapter 710, Tom Hayden).

Insurance Reforms

No specific California law guards against sex discrimination in insurance. The Unruh Act generally protects against sex discrimination in the insurance industry. The state insurance commissioner has adopted a regulation prohibiting insurers from refusing to issue any contract of insurance, or canceling or declining to renew such a contract, because of the sex, marital status or sexual orientation of the consumer.[10] There are exceptions to this regulation such as the regulation that allows gender as a consideration in car-insurance pricing.[11]

Attempts in the past to amend the Insurance Code to specifically disallow discrimination based on sex or marital status were unsuccessful. For instance, Senator Bill Lockyer authored SB 1212 in 1983 to try to amend the provisions dealing with life, disability and car insurance.

In 1976, Senator Omer Rains successfully authored SB 848 (Chapter 1169) to repeal the "domestic quit" provision in the Unemployment Insurance Code, which disallowed benefits to workers who quit for reasons such as lack of child care or moving to another city because of a spouse's job transfer. This bill also

[10] Title 10, Cal. Code Regs., section 2560.3.
[11] Title 10, Cal. Code Regs., section 2632.5 (d)(9).

insured that work-incentive programs did not discriminate on the basis of gender. Follow-up legislation in 1982 by Assemblymember Matthew Martinez (AB 2901, Chapter 1073) specified that leaving a job to move to a distant location constituted "good cause," making that person eligible for unemployment insurance. In 1984, Assemblymember Gloria Molina authored AB 3883 (Chapter 1058) to make unemployment insurance available to workers who left their jobs due to sexual harassment.

Insurance discrimination directed at victims of domestic violence has been addressed in recent legislation. Four bills were recently enacted on this subject:

- AB 1973 (Liz Figueroa, Chapter 603) of 1995 forbids health insurers and disability insurers from denying or restricting coverage to domestic-violence victims.

- AB 588 (Liz Figueroa, Chapter 845) of 1997 protects domestic-violence victims from discrimination by property and casualty insurers.

- AB 649 (Grace Napolitano, Chapter 176) of 1997 protects abused people from discrimination by life-insurance companies.

- SB 165 (Hilda Solis, Chapter 411) of 1998 permits persons who are forced to leave their employment because of domestic violence to receive unemployment insurance.

Gender Recently Added to Criminal Hate-Violence Laws

Gender was included as a protected classification in some, but not all, of the original hate-crimes statutes. Sex was included as a protected class in the original Ralph Civil Rights Act of 1976 (AB 2986, Chapter 1293, Civil Code section 51.7). In 1991, Assemblymember Lucille Roybal-Allard successfully authored AB 1009 (Chapter 1184), which added gender to some of the Penal Code sections addressing hate violence. Assemblymember Sheila Kuehl in 1998 authored AB 1999, which added gender to the remaining Penal Code sections addressing hate violence.

Proposition 209 Adds New Dimensions to California Civil Rights Laws

Passed by California voters in November 1996, Proposition 209 bars discrimination or preferential treatment based on gender or race in public employment, contracting and education. The federal

courts have upheld the overall validity of Proposition 209; however, a number of related cases are pending and it's expected that many more cases will be brought related to specific programs, such as "affirmative action" programs.

Proposition 209, called the California Civil Rights Initiative (CCRI) by its supporters, adds Article 1, Section 31 to the California Constitution. For purposes of this report the key provisions are subsections (a) and (c), which state:

(a) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, public education or public contracting.

(c) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education or public contracting.

Because sex discrimination is already prohibited under the California Constitution[12] and the many laws chronicled in this report, Proposition 209 will probably not have much effect related to sex-discrimination law unless clause (c), discussed below, is interpreted to supplant existing law. But prohibiting "preferences" is new and could have profound effect.

Legislative Response to Proposition 209 in 1998

Since "preferential treatment" is not defined by Proposition 209, the Legislature and the courts will have to interpret what it means. In September of 1997, Governor Wilson identified 31 affirmative action related laws which he said must be repealed or amended to comply with Proposition 209. Following up on the governor's suggestion two bills were introduced in the 1998 legislative session to repeal or revise these laws: SB 2041 (Quentin Kopp) and AB 1700 (Bernie Richter). Both bills failed passage in 1998.

Two other related bills were vetoed by the governor in 1998. They were SB 1735 (Richard Polanco) and AB 1664 (Kevin Murray). SB 1735 would have clarified when governmental agencies could undertake focused outreach to minority groups and women in employment and education. And AB 1664 would have encouraged

[12] CA Constitution Article 1, Section 7 (a) and Article 1, Section 8.

the state to enter into more contracts with small-business enterprises, many of which are owned by women and minorities.

Pending Court Actions

Prior to the passage of Proposition 209, the governor initiated litigation challenging the constitutionality of five affirmative action laws including hiring goals and state-contracting goals for women- and minority-owned businesses (*Wilson v. Personnel Board*). After the passage of Proposition 209, another lawsuit was filed by initiative supporters to challenge the constitutionality of other state affirmative-action laws (*Californians Against Discrimination and Preferences, Inc. v. Board of Governors*). These lawsuits were filed because even after the passage of Proposition 209, the state's affirmative-action laws will remain on the books unless repealed by the Legislature or overturned by the courts.

The constitutionality of collecting statistics on public-employment applications is being challenged in *Haggerty v. State of California and City of Mountain View*. The San Francisco County Superior Court upheld the practice of collecting these statistics. The case is on appeal before the California Court of Appeal. Lastly, the Pacific Legal Foundation is challenging the City of San Jose's outreach program for the awarding of city contracts.[13]

Opponents of Proposition 209 have brought several lawsuits to date. The first was the unsuccessful attempt to declare the entire proposition unconstitutional. The second was brought in April of 1998, when civil-rights groups asked the Alameda County Superior Court to overturn a March 10, 1998, executive order by Governor Wilson not to collect statistics on sex and race for state contracts (*Barlow v. Wilson*). The third was filed in July 1998 in federal court accusing Contra Costa County of discrimination against women- and minority-owned businesses in awarding contracts.

Gender-Based Distinctions Under Proposition 209

California case law interprets the California Constitution to prohibit sex discrimination by the state and its political subdivisions unless the government can meet a strict scrutiny test and prove a compelling purpose. In California, state and local policies and programs that use gender-based criteria can do so only if the reasons are compelling. The question hotly debated

[13] *Hi-Voltage Wire Works, Inc. v. San Jose.*

before the Proposition 209 election was whether Proposition 209's subsection (c) changed this interpretation of the law.

Ballot arguments in favor of Proposition 209 said subsection (c) was not meant to supplant current state protections against sex discrimination. They said it only applied to the new constitutional section, and that other constitutional protections, such as California's equal-protection clause, would remain in effect.

Ballot arguments against the initiative said the standard of review in public contracting, employment and education would change from strict scrutiny to a much less rigorous "rational basis" test. For instance, opponents contended, this could lead to a return to sex segregation in some public jobs such as law enforcement.

These opposing views of subsection (c) have not been tested before the courts or the Legislature.

The Future of Proposition 209

Key issues before the Legislature and the courts include deciding whether to repeal or amend state affirmative-action laws, weighing what is and is not a preference and grappling with how to evaluate whether discrimination persists. Questions related to preferences include: Is general outreach permissible? Is targeted outreach ever permissible? Is setting goals permissible? Are quotas clearly impermissible?

If the state stops keeping data on women and minorities in state jobs and on state contracting with women- and minority-owned businesses, it could be difficult to determine whether there is any discrimination against those groups by the state.

Supporters of state goals for contracting with women- and minority-owned businesses have sought a state-funded study, which they believe would show a history of discrimination against women and minorities bidding for state contracts. Senator Richard Polanco has led efforts in the Legislature to fund a statistical-disparity study of women- and minority-owned businesses to compare the number of qualified businesses in the state and the percentage actually garnering state contracts.

Conclusion

Landmark advancements have been made in women's civil rights in California and the nation since the early 1960s. Although a

federal ERA failed to pass, in California the goals of an ERA were achieved through case law interpreting the California Constitution[14] and a vast collection of laws. Whether clause (c) of Proposition 209 diminishes constitutional protections for women in the areas of public contracting, employment and education remains an open question.

[14] See e.g. *Sail'er Inn v. Kirby*, 5 Cal. 3d 1 (1971); *Hardy v. Stumpf*, 21 Cal. 3d 1 (1978).

Chapter Two

Education Equity For Girls And Women: Today's Schoolgirls May Cure Tomorrow's Epidemics

History of Coeducation

Girls access to public education in the United States started with a few Quaker schools in the late 1700s and evolved over the 1800s. Private tutors and finishing schools for girls were often utilized by wealthier families during this time. But by 1900, 98 percent of public high schools were coed.[15]

Oberlin was the first college to go coed in 1833. In 1837, Mount Holyoke, the first of the elite "seven sisters" women's colleges, was founded. By 1910, 58 percent of public and private colleges and universities were coed. Most of the remaining private women's and men's colleges began to go coed in the 1960s.[16]

The last bastion of male-only military academies went coed in 1996 when the U.S. Supreme Court ruled in *U.S. v. Virginia* that state-funded military academies such as the Virginia Military Institute and the Citadel must admit women.

While most schools and colleges are coed today, some private institutions are female-only and a few public schools in California and the nation are experimenting with single-gender classrooms (discussed on page 31).

Laws Barring Sex Discrimination in Education

The federal law prohibiting sex discrimination in education, Title IX of the 1972 Education Amendments, became effective July 21,

[15] "Education and Gender," *CQ Researcher*, Vol. 4, No.21, June 3, 1994, pp 491-492.
[16] Ibid.

1975. Title IX requires equal educational opportunity in all educational institutions, public and private, that receive or benefit from any money from the federal government. Congress also enacted the Women's Education Equity Act (WEEA) providing grants for research on gender equity programs in 1974. In addition, high schools and community colleges continue to receive federal funding to increase participation of women and men in nontraditional occupations through the Perkins Vocational Education Act of 1984 and 1990.

Similar to the federal Title IX law, California's Sex Equity in Education Act (SEEA), passed in 1982, bars sex discrimination in all educational institutions that receive state funds.[17]

Overview of Education Equity Laws in California

SEEA is the major California law prohibiting sex discrimination in education, but there are a number of other laws related to education equity that are summarized in Figure 3.

Figure 3
Education-Equity Laws in California

Year	Bill, Chapter #	Author	Description
1973	SB 1285, Ch. 764	James Mills	Contributions of women must be included in social studies courses for grades 1-12.
1973	AB 2187, Ch. 571	Ken Cory	Prohibits sexual bias in instructional materials.
1974	SB 1466, Ch. 182	George Moscone	Bars sex discrimination in K-12 courses and counseling.
1974	AB 3650, Ch. 1525	Bill Bond	Encourages equality in athletics in public high schools.
1974	AB 3651, Ch.1526	Bill Bond	Encourages equality in athletics for public higher education.
1975	AB 1559, Ch. 789	Michael Wornum	Requires equality in participation and funding for high school athletic programs.
1975	AB 1558, Ch. 838	Floyd Mori	Encourages equal opportunities in athletics at CSU. (Funding- equality and annual-report requirements repealed by 1995 legislation

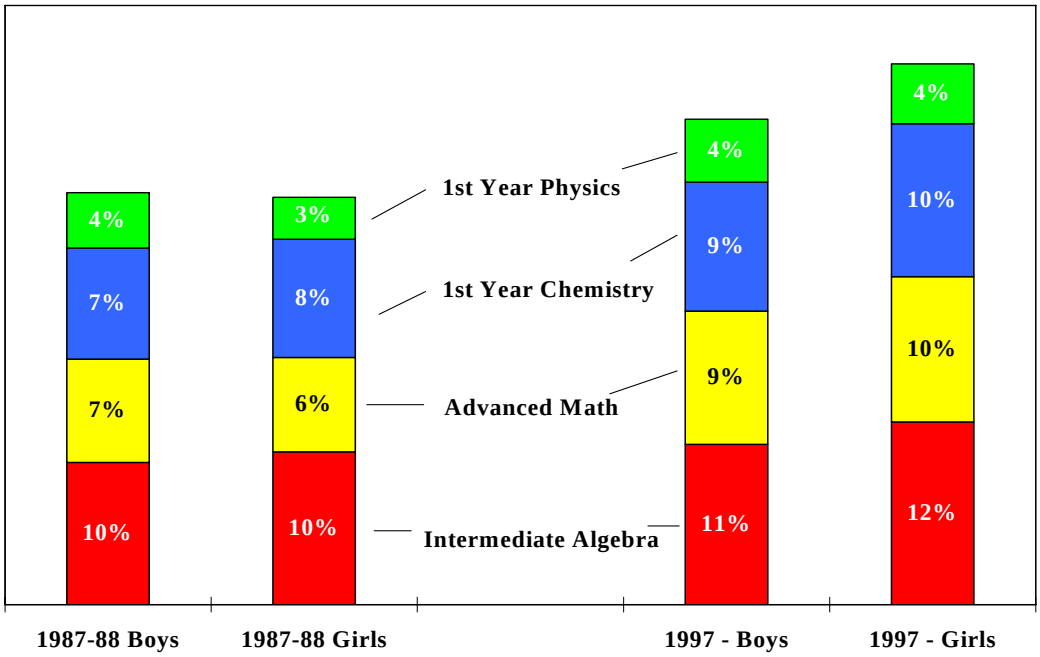
[17] **Education Code sections 200 and following.**

			sponsored by Assembly Committee on Higher Education, AB 446, Ch 758.)
1976	AB 3595, Ch. 1176	Floyd Mori	Insures bias-free vocational counseling.
1978	AB 2727, Ch. 964	Julian Dixon	Includes the contributions of women in school curriculum.
1982	AB 3133, Ch. 1117	Mike Roos	Sex Equity in Education Act (SEEA) bars sex discrimination in education.
1984	SB 2252 Ch. 1371	Milton Marks	Clarifies that sexual harassment is covered by SEEA.
1987	SB 793, Ch. 118	Ed Davis	Asks the California Department of Education (CDE) to develop regulations to implement SEEA.
1988	SB 148, Ch. 1355	Marian Bergeson	Encourages future teachers to understand educational equity principles and practice.
1988	AB 3653, Ch. 1514	Terry Friedman	Clarifies remedies under SEEA.
1992	SCR 81, Res Ch. 111	Becky Morgan	Asks the CDE to include SEEA in its compliance-review process and make data available by gender.
1992	SB 1930, Ch. 908	Gary Hart	Allows suspension or expulsion for sexual harassment.
1992	AB 2900, Ch. 906	Marguerite Archie-Hudson	Requires schools have a written sexual-harassment policy.
1993	AB 1476, Ch. 1123	Jackie Speier	Requires the CDE to annually review 20 school districts for compliance with sex - discrimination laws and make data available by gender.
1998	SB 1064, Ch. 1078	Patrick Johnston	Creates a comprehensive program to serve the educational needs of pregnant and parenting teens and their children.
1998	AB 499, Ch. 914	Sheila Kuehl	Clarifies remedies for discrimination in education.

Educational Advancements By Girls and Women

Since the laws barring sex discrimination in education rocked our nation's schools, girls and women have made great strides on indicators such as improved enrollment in advanced math and science courses in high school, increased college eligibility rates, higher college graduation rates, more college degrees in traditionally male-dominated fields of study and more participation by girls and women in high school and college athletics.

Figure 4
Rate of Enrollment in Math and Science Courses by Gender,* 1987 and 1997



* The percent of 9-12th grade students, by gender, enrolled in that course.
Source: California Department of Education, Educational Demographics, CBEDS Data Collection, Oct. 1987 and Oct. 1997

Lower Dropout Rates and Higher Graduation Rates For Young Women

The four-year dropout rate for grades 9 through 12 remains higher for males than females. Last year, it was 14 percent for young men and 12 percent for young women. In 1991-92, it was 20 percent for young men and 18 percent for young women.[18]

[18] California Department of Education, *Educational Demographics*.

In the 1996-97 school year 134,535 young women graduated from high school and 124,536 young men graduated.[19]

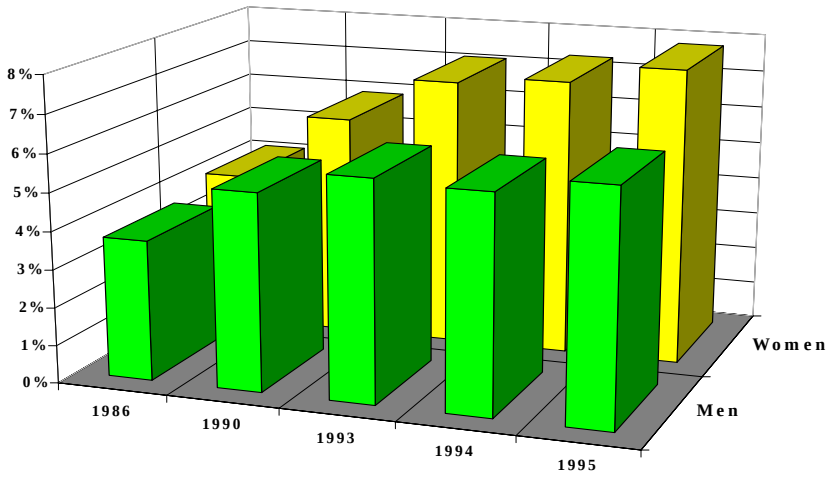
More Young Women Taking Advanced Math, Science and Advanced Placement

Today a higher percentage of California high school girls than boys take intermediate algebra, advanced math and chemistry (See Figure 4). Physics is the only advanced math or science course with more young men than women.

Among all ethnic groups, young women participate at a higher rate than young men in all advanced math and science courses except physics. Among young women in different ethnic groups, Asians enroll in the highest percentages, followed by Filipinos, Caucasians, Pacific Islanders, American Indians, African-Americans, and Hispanics (See Appendix B).

The proportion of both young men and young women taking 12th-grade Advanced Placement (AP) exams has increased since 1986. Women's participation in these examinations has grown at a faster rate than men's (See Figure 5).

Figure 5
Percent of 12th-Grade Males and Females Taking AP Exams, 1986-1995



Source: California Postsecondary Education Commission, *Higher Education Performance Indicators Report*, 1996, p. 36.

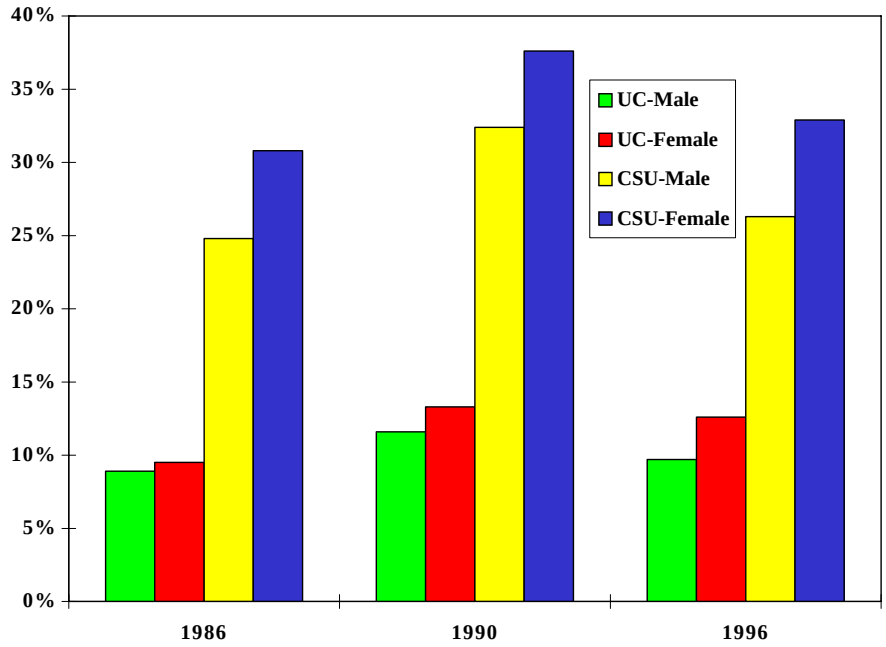
[19] *Fact Book 1997-98*, California Department of Education.

College Eligibility Rates Increase for Young Women

According to the California Postsecondary Education Commission, college eligibility rates for freshman admission to the University of California (UC) and the California State University (CSU) systems are higher for young women than young men.

Figure 6 summarizes the differences in eligibility rates. Eligibility for UC and CSU are based on courses completed and grade-point average. Scholastic Aptitude Test (SAT) scores are only considered if the grade-point average is not high enough. UC's requirements are more rigorous than CSU's. Among women who graduated from high school in 1986, 31 percent were eligible for CSU and 10 percent for UC; men's eligibility was 25 percent for CSU and 9 percent for UC. By 1996, 33 percent of women graduates were eligible for CSU and 13 percent for UC; men's eligibility was 26 percent for CSU and 10 percent for UC.

Figure 6
College-Eligibility Rates By Gender, 1986, 1990 and 1996



Source: California Postsecondary Education Commission, *Eligibility of California's 1996 High School Graduates for Admission to the State's Public Universities*, December 1997, pp. 34-37, 52-55.

Young Men Outperform Young Women on the SAT

Young men continue to outperform women on the SAT, even on the verbal section of the SAT. Figure 7 summarizes these differences over a 10-year period. Most students applying to California colleges take the SAT.

Figure 7
SAT Scores By Gender, 1988 and 1998

Year	Test	Females' Average Score	Males' Average Score
1988	SAT Verbal	494	506
	SAT Math	489	530
1998	SAT Verbal	492	502
	SAT Math	499	537

Source: The College Board

Enrollment Rates of Women in California Colleges Surges

Since 1980 the undergraduate enrollment at community colleges has hovered around 55 percent female and 45 percent male; in the CSU system the margin has gone from a 50/50 split in 1980 to 55 percent female and 45 percent male in 1996. At UC, there were 48.5 percent women and 51.5 percent men in 1980 and in 1996 there were 52 percent women and 48 percent men. At private colleges, the undergraduate enrollment went from 49 percent female, 51 percent male in 1987 to 55 percent female, 45 percent male in 1996.[20]

The U.S. Census Bureau tells us the proportion of women graduating from college now surpasses men's graduation rates.[21] This finding makes sense given that more women than men attend California community colleges, state universities and private institutions.

Graduate Enrollments Higher for Women at CSU Than UC

At the CSU system, women have outnumbered men for some time in the post-baccalaureate, general teaching credential, and

[20] California Postsecondary Education Commission (CPEC) , *Student Profiles*, 1997 and 1990.
[21] *Education Attainment in the United States: March 1997*, Census Bureau, U.S. Department of Commerce, May 1998.

masters' programs. For instance in the fall of 1996, women made up 68 percent of the post-baccalaureate students and 60 percent of the masters students.[22]

Despite higher UC graduation rates among women than men, more men than women were enrolled in masters' and doctoral programs at UC in the fall of 1996. The masters' program had 48 percent women and the doctoral program had 41 percent women.[23]

More Women in Professional Schools at UC

In all the UC professional schools such as medicine, law, dentistry and theology women increased their enrollment from 44 percent in 1987 to 50 percent in 1996. From 1987 to 1996 women increased their representation from 31 percent to 41 percent among medical interns and residents.[24]

Women Earning More Undergraduate and Graduate Degrees

In the 1994-95 academic year women in all California colleges and universities statewide earned more associate degrees, bachelor's degrees and master's degrees than men, while men earned more Ph.D's.[25]

The rates of degrees earned by women in traditionally male fields of study have increased since 1973-74, the year before Title IX became effective. These changes are summarized in Figure 8. Figure 8 is based on national data from the U.S. Department of Education. Comparable data for California were not available.

Given the higher participation of high school girls than boys in advanced math and chemistry, but not physics, it's a little surprising to note that men still outpace women in earning degrees in many of these related subject areas (computers, engineering, math). The fact that the high school data is for California public schools and the college-degree data is national, and covers private and public institutions, probably does not explain this discrepancy. The reasons fewer women than men seek degrees in computer sciences, engineering and math are a subject for future research. Lack of mentoring by male professors, discomfort with

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[22] CPEC, *Student Profiles*, 1997, 2-15.
[23] CPEC, *Student Profiles*, 1997, 2-14.
[24] Ibid.
[25] *Degrees Conferred by ALL Institutions of Higher Education, By Level of Degree, Sex of Recipient, and State*, U.S. Dept of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System, Table 5, 1994-95.

the teaching style in these courses, and lack of female role models might play a part in fewer women pursuing these areas of study.[26]

With more women earning graduate degrees, more women may be hired as full-time faculty in higher education. In 1995, 44 percent of the full-time faculty members at community colleges, 32 percent of the faculty at CSU, and 30 percent of the UC faculty were women. [27]

Figure 8
Rate of Degrees Earned in Traditionally Male-Dominated Fields by Gender, 1973-74 and 1994-95

Field	Year	Bachelor's		Master's		Doctorate	
		Men	Women	Men	Women	Men	Women
Biology/Life Sciences	1973-74	69%	31%	69%	31%	80%	20%
	1994-95	48%	52%	48%	52%	60%	40%
Business	1973-74	87%	13%	93%	7%	95%	5%
	1994-95	52%	48%	63%	37%	73%	27%
Communications	1973-74	62%	38%	63%	37%	83%	17%
	1994-95	42%	58%	38%	62%	50%	50%
Computer/Information Sciences	1973-74	84%	16%	87%	13%	95%	5%
	1994-95	72%	28%	74%	26%	82%	18%
Engineering	1973-74	98%	2%	98%	2%	98%	2%
	1994-95	84%	16%	84%	16%	88%	12%
Mathematics	1973-74	59%	41%	71%	29%	91%	9%
	1994-95	53%	47%	61%	39%	78%	22%
Physical Sciences	1973-74	92%	18%	86%	14%	93%	7%
	1994-95	65%	35%	70%	30%	76%	24%

Source: U.S. Department of Education, National Center for Education Statistics, *Integrated Postsecondary Education Data System*, Tables 279, 281, 282, 283, 285, 291, & 292, March 1997. (See Appendix C for these Tables.)

[26] Some reasons for this discrepancy are explored in *Talking About Leaving: Why Undergraduates Leave the Sciences* by Elaine Seymour and Nancy M. Hewitt (Westview Press, 1997) and *They're Not Dumb, They're Different: Stalking the Second Tier* by Sheila Tobias (Research Corporation, a foundation for the advancement of science, 1990).

[27] *Composition of Higher Education in California*, California Postsecondary Education Commission Factsheet, February 1998.

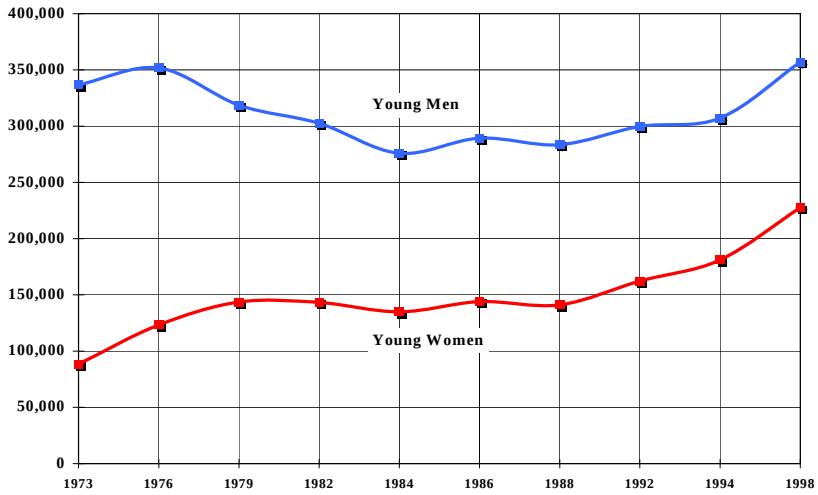
More Young Women Competing in High School Athletics

Just after Title IX was adopted, Billie Jean King defeated Bobby Riggs in a 1973 tennis match showcasing the new view of women as equals in multiple arenas. For many individuals, participation in athletics has come to symbolize the monumental effects of Title IX.

In California, the Legislature deeded authority over high school interscholastic athletic programs to local boards, which may allow the California Interscholastic Federation (CIF) to run competitive athletics, so long as the CIF does not discriminate on the basis of sex, race or ethnic origin. This outside authority was first established by SB 19 (Chapter 1001), authored by Senator Bill Campbell in 1981. Subsequent legislation has reaffirmed the CIF's authority.[28]

According to the CIF, young women's participation in competitive sports has increased since 1973 (See Figure 9). The rate of participation during 1997-98 was 31 percent for young women and 47 percent for young men. The CIF does not maintain information on other indicators such as operating expenses for the girls' and boys' programs, coaches hired, playing fields and playing times.

Figure 9
High School Athletic Participation for Males and Females, 1973-1998



Source: California Interscholastic Federation.

[28] AB 273, Ch 617, 1991 (Steve Clute); AB 1375, Ch 487, 1993 (B.T. Collins); SB 237, Ch 151, 1996 (John Lewis).

Women Making Strides at the College Level

In 1997 the U.S. Supreme Court upheld an appeals court Title IX decision that found gender discrimination at Brown University because women comprised 51 percent of the student body, but they represented only 38 percent of the athletes.[29]

Figure 10
Women in Intercollegiate Athletics at California Campuses, 1995-96 - Divisions I and II

School	% of Women Enrolled	% of Athletes Who Were Women	% of Total Athletic Scholar-ships for Women Athletes	% of Total Recruit-ment Dollars for Women Athletes	% of Total Athletic Budget for Women's Athletics
CSU Bakersfield	63%	43%	4%	29%	44%
CSU Chico	50%	36%	no data	35%	42%
CSU Dominquez Hills	63%	44%	53%	no data	46%
CSU Fresno	53%	37%	37%	30%	23%
CSU Hayward	62%	51%	no data	36%	56%
CSU Long Beach	55%	39%	53%	37%	44%
CSU Los Angeles	58%	48%	51%	29%	41%
CSU Northridge	55%	37%	44%	42%	41%
CSU Pomona	43%	39%	12%	50%	45%
CSU Sacramento	54%	38%	44%	28%	33%
CSU San Bernardino	61%	44%	42%	4%	42%
CSU San Francisco	58%	43%	no data	55%	49%
CSU San Jose	51%	40%	36%	31%	38%
CSU San Luis Obispo	42%	37%	31%	37%	30%
CSU Sonoma	60%	35%	no data	19%	33%
CSU Stanislaus	60%	38%	no data	50%	43%
Saint Mary's	58%	35%	41%	31%	37%
Stanford	50%	44%	39%	28%	28%
UC Berkeley	48%	38%	35%	22%	28%
UC Davis	52%	32%	no data	56%	37%
UC Irvine	53%	41%	51%	44%	47%
UC Los Angeles	51%	39%	46%	27%	17%
UOP	55%	38%	36%	40%	22%
USD	57%	36%	52%	30%	34%
USC	47%	22%	34%	11%	12%
USF	64%	48%	46%	29%	41%
National Averages	53%	37%	37%	27%	27%

Source: *Gender Equity Report*, Women's Sports Foundation, 1997, http://www.lifetimetv.com/WoSport/stage/GENEQ97/ (Colleges listed returned surveys to the Women's Sports Foundation.)

[29] *Brown University v. Cohen*, 117 S. Ct. 1469 (1997).

Groups such as the Independent Women's Forum are concerned this decision will lead to quotas and will unfairly discriminate against men. The Women's Forum is working at the national and state levels to reform Title IX laws to overcome what it perceives as the unintended consequences of Title IX.[30] Other groups, such as the Women's Sports Foundation, support the *Brown* decision and assert that discrimination in athletics persists and the federal Office of Civil Rights is not adequately enforcing the law.[31]

California colleges and universities generally provide more athletic opportunities to men than women. Progress has been made since the federal and state laws requiring equal educational opportunities were enacted, but the differences at the college level are still substantial. In 1994 Congress passed the Equity in Athletics Disclosure Act, which required colleges to divulge participation rates, coaching salaries and expenses, student aid and operating expenses in men's and women's sports.

Based on this new law, the Women's Sports Foundation surveyed college campuses and published the *Gender Equity Report* in 1997. Figure 10 showing Division I and II schools is derived from that report. Division III schools were not included in this figure because their intercollegiate athletic programs for men and women are quite small.

Data on Gender Required by California Law Not Readily Available

In 1993, the Legislature directed the state superintendent of public instruction to make gender-related data available "upon request, wherever possible."[32] Most of the data required by AB 1476, (Chapter 1123) authored by then-Assemblymember Jackie Speier, is not readily available from the California Department of Education (CDE). Data for this report, such as "the number of high school graduates who complete the minimum requirements for admission to the University of California" and "the number of pupils participating in interscholastic athletics," were collected from other sources.

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30 "You're in Trouble Again, Johnny," *The Women's Quarterly*, the Independent Women's Forum, Winter 1998, No. 14.

31 *Gender Equity Report*, Women's Sports Foundation, New York, 1997.

32 Education Code Section 252.

Sex-Equity Compliance Reviews

Compliance with the federal and state laws barring gender discrimination in education is not well understood by school districts, according to staff who conduct sex-equity compliance reviews for CDE. Since 1994, CDE has conducted 20 sex-equity compliance reviews each year. The CDE has done some 80 reviews and found widespread problems especially in segregating physical-education classes by gender, inadequate implementation of sexual-harassment policies, and lack of relevant knowledge among teachers and administrators.[33]

Other provisions of AB 1476 required these compliance reviews. The CDE was directed to examine at least 20 districts as part of a previously required review of 250 school districts per year to ascertain compliance with various federal and state laws such as special education, safe and drug free schools, and migrant education.

Because it would take 50 years to complete the sex-equity review process for all 1,052 school districts, Assemblymember Sheila Kuehl introduced AB 499 in 1998 to double the number of compliance reviews each year. This provision was amended out of AB 499 due to opposition from the Governor's Office, which opposed additional funding for the department. As amended, AB 499 clarifies remedies for discrimination in education and was signed into law (Chapter 914).

According to staff of the CDE who are conducting these compliance reviews, most teachers, academic counselors and administrators could benefit from in-service training on sex-equity issues and such training is almost always recommended to school districts. Although the 1988 Marian Bergeson bill reforming the teacher-credentialing process (SB 148) encouraged the Commission on Teacher Credentialing (CTC) to improve pre-service training on educational equity, in reality future teachers receive little or no training in Title IX laws and their application.

Pre-Service and In-Service Training of Teachers and Administrators

Attempts to legislatively require pre-service and in-service training for teachers, academic counselors and administrators on gender-

[33] Testimony by Alicia Hetman, Gender Equity Consultant to the CDE, Assembly Select Committee on California Women, Dec. 11, 1997 and subsequent telephone conversations.

equity laws have failed since they were first introduced by Senator Leroy Greene in the mid-1980s. The last time this was tried in 1993 (AB 1464, Vivien Bronshvag), Governor Wilson vetoed the bill, saying the matter should be handled administratively through the CTC. The California division of the American Association of University Women (AAUW), which has actively worked on this issue, believes the gender- equity standards developed by the CTC are inadequate.[34]

Option for Action: The Legislature might again consider requiring pre-service and in-service training given the new evidence from the sex-equity compliance review process.

Special Education and Learning Disabilities

Boys outnumber girls in special-education programs in California as Figure 11 illustrates. This discrepancy seems suspect, since identifying learning disabled students may be done subjectively based on their behavior in classrooms.

Recent studies estimate that around 10 percent of the school-aged population is learning disabled[35] and probably as many girls as boys are affected by learning disabilities.[36]

Figure 11
Special-Education Enrollment In California By Gender, April 1997

Disability Category	Female	Male	Total
Mentally Retarded	15,219	20,379	35,598
Hard of Hearing	2,660	3,474	6,134
Deaf	2,192	2,375	4,567
Speech/Language Impaired	51,816	107,359	159,175
Visually Impaired	1,992	2,570	4,562
Emotionally Disturbed	4,346	15,219	19,565
Orthopedically Impaired	6,031	7,810	13,841
Other Health Impaired	5,807	9,927	15,734
Learning Disability	107,363	229,297	336,660
Deaf-Blind	97	107	204

[34] Ibid.
[35] "Learning Disabilities," G. Reid Lyon, *The Future of Children,* Vol. 6, No. 1, Spring 1996.
[36] *How Schools Shortchange Girls*, AAUW Education Foundation, 1992.

Multi-Handicapped	2,655	4,056	6,711
Autism	1,115	5,186	6,301
Traumatic Brain Injury	309	589	898
Non-Categorical	264	326	590
Total Special Education	201,866	408,674	610,540
Total Education Enrollment	2,734,706	2,878,259	5,612,965

Source: California Department of Education, Special Education Division, "April 1997 Special Education Enrollment Data."

If correctly identifying a student as learning-disabled means that child will get the help he or she needs to overcome that disability, such as a reading disability, then under-identifying females could lead to educational deficits and lifelong problems they might otherwise overcome.

Pregnant and Parenting Students

Schools are prohibited from discriminating against pregnant and parenting students under the state SEEA and federal Title IX laws. Before Title IX laws passed, pregnant students were often expelled or shunted off to special programs. Today, California schools are providing more educational opportunities geared to these students.

Several state programs help pregnant and parenting students stay in school. These programs are the Adolescent Family Life Program (AFLP), Cal-Learn for welfare-dependent teen parents, the Pregnant Minors Program, the School-Age Parent and Infant Development Program, Pregnant and Lactating Students, and the Gender Equity Teen Parent Program, which provides vocational education and services. In 1995 about 40 percent of the pregnant and parenting teen mothers in California who were aged 18 and younger were served by at least one of these programs.[37]

Senator Patrick Johnston authored SB 1064 (Chapter 1078) in 1998. This law expands and reforms school-based programs to improve educational outcomes and parenting skills for pregnant and parenting teenagers.

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[37] *California Strategies to Address Teenage Pregnancy*, Kate Sproul and Kim Connor, California Senate Office of Research, April 1997. Available by calling (916) 445-1727 or at *http://www.sen.ca.gov/sor*.

Vocational Education

Federal funding to increase participation among women and men in nontraditional occupations is available to California high schools and community colleges through the Perkins Vocational Education Act of 1990. The CDE and the community colleges disburse about $12 million each year in grants from this federal program. Before the passage of Title IX, high school vocational-education classes were segregated by gender.

Sexual Harassment Complaints More Prevalent in Schools

Sexual harassment was explicitly added to the state law prohibiting sex discrimination in education in 1984 by legislation authored by Senator Milton Marks (SB 2252, Chapter 1371). California law requires all schools to have a written anti-harassment policy and to communicate that policy to students and employees, under 1992 legislation by Assemblymember Marquerite Archie-Hudson (AB 2900, Chapter 906). California law also gives a school district the authority to suspend a student in grades 4-12 for sexual harassment under 1992 legislation by Senator Gary Hart (SB 1930, Chapter 908).

Sexual harassment in education and the potential liability of school districts and teachers is a developing policy and legal issue. Schoolyard teasing, sexual jokes and flirting are part of most students' world, and sometimes it's hard to draw a bright line between questionable and egregious behavior among students. But the law says schools must undertake this task to protect students and school personnel. And according to an AAUW survey, many students, girls and boys, experience sexual harassment and suffer adverse effects such as fear of going to school and loss of confidence.[38]

When the inappropriate actions involve student-to-student conduct, sexual harassment may be harder to determine. For instance, the 6-year-old North Carolina boy who was suspended from school for kissing a girl garnered headlines in 1996. California law does not allow suspension for sexual harassment until the fourth grade.

The question of school-district liability is an evolving area of state and federal law. The U.S. Supreme Court recently found that under Title IX damages could be awarded when a teacher sexually

[38] *Hostile Hallways: The AAUW Survey on Sexual Harassment in America's Schools*, 1993.

harasses a student if a school official with authority to intervene knew about the conduct and was deliberately indifferent to it.[39] The U.S. Supreme Court has agreed to review a case in the 1998-99 term on whether school districts are liable under federal law for student complaints against classmates. [40]

The question of school-district financial liability for harassment taking place between students or between a teacher and a student has not been tested under state law. The threat of potential liability has spurred many school districts into doing a better job of training administrators and teachers to recognize sexual harassment and explaining what to do if a student complains. This kind of training is not currently required by state law.

Option for Action: The Legislature might consider requiring sexual-harassment training for teachers and administrators.

Single-Gender Academies

Governor Wilson proposed single-gender academies as part of the 1996 state budget. Assemblymember Denise Ducheny authored AB 3488 (Chapter 204) establishing statutory authority for this new pilot program within the CDE. Grants of $250,000 each were subsequently awarded to establish six girls' schools and six boys' schools that are designed to be comparable in funding and opportunities. Governor Wilson's attempt to expand grants for single-gender schools failed in the 1998-99 state budget process.

No funding was appropriated in the 1996 budget or AB 3488 to fund a statewide evaluation of the single-gender academies. Pilot programs are required to self-evaluate their performances. A privately funded, independent evaluation is being done by researchers from UC San Diego and Johns Hopkins University. [41]

Single-gender academies are controversial for a variety of reasons. Similar schools in other states were declared illegal under state and federal anti-discrimination laws. California single-gender academies have not been similarly challenged in court to date, probably because they are voluntary and the funding is evenly divided between the girls' and boys' programs. The U.S. General Accounting Office in a 1996 report found the evidence on the

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[39] *Gebser v. Lago Vista Independent School Dist.* 118 S. Ct. 1989 (1998).

[40] *Davis v. Munroe County Board of Education*, pending U.S. Supreme Court.

[41] The researchers are: Lea Hubbard, UC San Diego, and Amanda Datnow, Johns Hopkins University.

benefits of single-gender schools inconclusive.[42] Commentators, such as Joanne Jacobs with the *San Jose Mercury News,* believe single-gender academies may boost performance, but probably because of other factors such as teacher training, smaller classes, outreach to parents and student mentoring by teachers.[43]

Supporters of single-gender academies believe many boys and girls learn better when segregated by sex. Some parents believe girls are shortchanged in coeducational classrooms that may restrict academic potential and contribute to loss of self-confidence when girls enter adolescence.[44] Some parents hope single-gender schools will lead to less sexual activity and more studying. Governor Wilson felt at-risk boys would benefit from discipline and role models especially designed for boys.

Conclusion

Girls and women have harvested many of the fruits nurtured by the passage of state and federal educational equity laws, particularly the federal Title IX and state SEEA laws. Significant female advancements on many education indicators are clearly linked to legal, social and political changes in the last 30 years. These advancements include improved enrollment in advanced math and science courses in high school, increased university-eligibility rates, higher college and university graduation rates, more degrees in traditionally male-dominated fields of study and more participation by girls and women in high school and college athletics

Girls today can dream about becoming Olympic athletes or the governor of California because of educational changes instigated by Title IX laws. A girl starting kindergarten in 1999 may discover the cure for cancer in the 21st century because of the educational opportunities available to her today.

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42 "Public Education: Issues Involving Single-Gender Schools and Programs," General Accounting Office, May 28, 1996.

43 "A Place Just for Girls," Joanne Jacobs, *San Jose Mercury*, September 11, 1997.

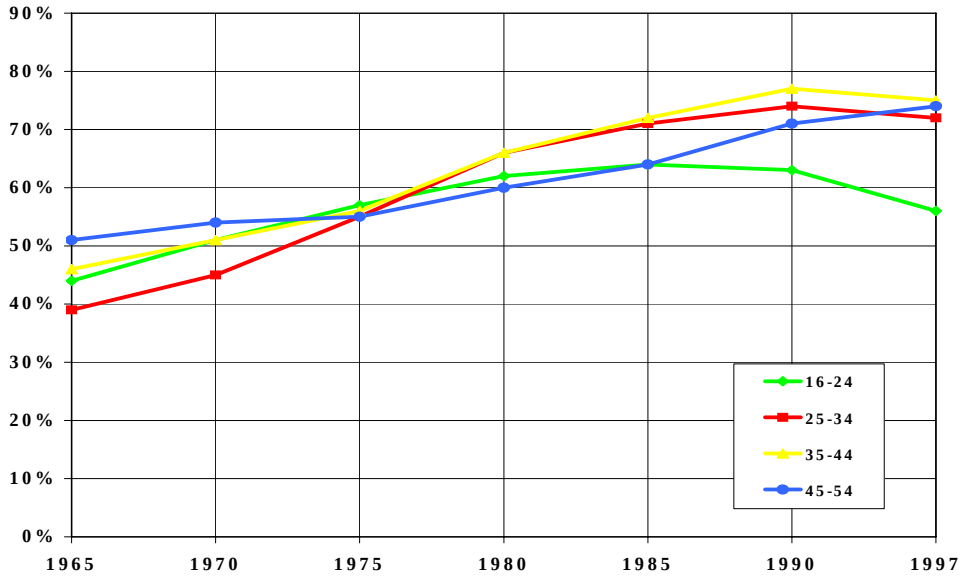
44 *How Schools Shortchange Girls,* AAUW Educational Foundation, 1992.

Chapter Three

Pursuing Fair Treatment in the Workplace: Rosie The Riveter May Move into Management

The dramatic increase in working women since the early 1960s is one of the most important labor market developments in the 20th century. In the early part of this century about one in four women, generally poorer women, worked outside the home. Since 1960 married women, women with children and younger women have entered the work force in droves. Economic necessity, new opportunities and changing expectations for women fueled this paradigm shift.

Figure 12
Labor-Force Participation Rates Among Women by Age, 1965 – 1997



Source: "Employment Status of the Civilian Noninstitutionalized Population by Age, Sex and Race," U. S. Department of Labor, Bureau of Labor Statistics.

Figure 12 shows the changes in labor-force participation rates among women since the 1960s. Upwards of 70 percent of women between the ages of 25 to 54 are now in the work force, whereas in 1965 only 39 percent of women ages 25 to 34, 46 percent of women ages 35 to 44 and 51 percent of women ages 45 to 54 were working outside the home. Participation rates among younger women, ages 16 to 24, went from 44 percent in 1965 to 64 percent in 1985 to 56 percent in 1997. The reasons for this recent decline are probably related to the recession in the early 1990s.

Although women's participation in the labor force has skyrocketed, men's participation rates at every age group are significantly higher than women's. For instance in 1996 in California, for ages 35 to 44, 90 percent of men were in the work force compared with 73 percent of women.[45] In 1996, 42 percent of the California labor force was female.[46]

Protections in California Law

From equal pay for equal work to hiring and firing decisions to work attire, the California workplace has evolved into a more gender-neutral environment. High-profile employment-protection laws first enacted in California include:

- In 1949, the equal wage-rate law was enacted with a few exceptions.

- In 1970, in a bill by Assemblymember Charles Warren (AB 22, Chapter 1508), the Legislature added sex to the list of groups protected from employment discrimination in the California Fair Employment Practices Act (FEPA).[47]

- In 1976, in a bill by Senator David Roberti (SB 1642, Chapter 1195), marital status was added as a protected category to the California FEPA.

- In 1977, in a bill by Richard Alatorre (AB 1047, Chapter 1019), for-profit social clubs, fraternal, charitable, and educational organizations were made subject to the FEPA.

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45 California Dept. of Finance, Demographic Research Unit.

46 Ibid.

47 Article 1, Sec. 8 of the California Constitution also provides protections from employment discrimination based on sex or race/ethnicity.

- In 1978, in a bill by Assemblymember Howard Berman (AB 1960, Chapter 1321), a ban on discrimination on the basis of pregnancy was added to the FEPA and women were guaranteed a pregnancy disability leave.

- In 1982, in a bill by then-Assemblymember Patrick Johnston (AB 1985, Chapter 1193), sexual harassment was explicitly added to the Fair Employment and Housing Act (FEHA) as a prohibited activity in the workplace [48]

- In 1991, in a bill by Assemblymember Gwen Moore (AB 77, Chapter 463), family leave provisions were added to the FEHA.

- In 1994, in a bill by Senator Charles Calderon (SB 1288, Chapter 535), women gained the right to come to work wearing pants, unless the employer has a good reason to require uniforms or some other "no pants" policy.

The California Legislature has also addressed less easily regulated forms of potential sex discrimination in employment with legislation dealing with "comparable worth" or "pay equity" and the "glass ceiling." These complex areas for legislative action are discussed below.

All of the benchmark changes in California law generally have a federal counterpart, such as the federal civil-rights law barring employment discrimination based on gender and the federal Family and Medical Leave Act.

Women's Earnings

Women must be paid as much as men for equal work, the law says. But a debate continues to rage among academics, advocacy groups and policymakers as to whether wage discrimination persists. Women's rights advocacy groups point to so-called "wage gap" data to show on-going disparity and discrimination in earnings.[49] Conservative groups such as the Pacific Research Institute attribute differences in pay between women and men to women having less seniority because more women take time off from the work force to have and raise children and take care of

[48] FEPA was reorganized and became the FEHA in 1980.

[49] See, e.g., "Stall in Women's Real Wage Growth Slows Progress in Closing the Wage Gap," and "The Male-Female Wage Gap: Lifetime Earnings Losses" by Heidi Hartmann and Julie Whittaker, Institute for Women's Policy Research, February 1998 and March 1998.

other family members, and because women have chosen occupations that pay less money.[50]

In a June 1998 report by the President's Council of Economic Advisers, these economists concluded there is an "unexplained" differential in the wage gap even after adjustments for gender differences in education, labor-market experience, broad occupational and industrial distributions and union status. This unexplained differential points to gender discrimination in the labor market, a conclusion supported by studies cited in the report.[51]

The Wage Gap

According to the Bureau of Labor Statistics, the median weekly earnings of full-time working women in 1997 were 74 percent of men's earnings. Women's median weekly earnings have risen steadily but slowly since 1963 (the year the federal Equal Pay Act was signed into law), when women earned 59 percent of what men earned.

One important trend is the narrowing of the wage gap for married women with children, which also coincides with the trend toward more labor-force participation by this group (discussed below). Married women with children traditionally have earned less than married women without children and unmarried women without kids. Single mothers continue to have the lowest pay.[52]

Differences in wages between women and men can also be broken down according to age and race/ethnicity. Younger women come closest to men on the pay scale; white women tend to earn more than African-American women and African-American women tend to earn more than Hispanic women.

Another way to view this wage-gap data is to look at how much women and men make in various job classifications by age groups. Figure 13 shows California-specific data compiled by the Department of Finance's Demographic Research Unit from the 1996 Current Population Survey Supplement.

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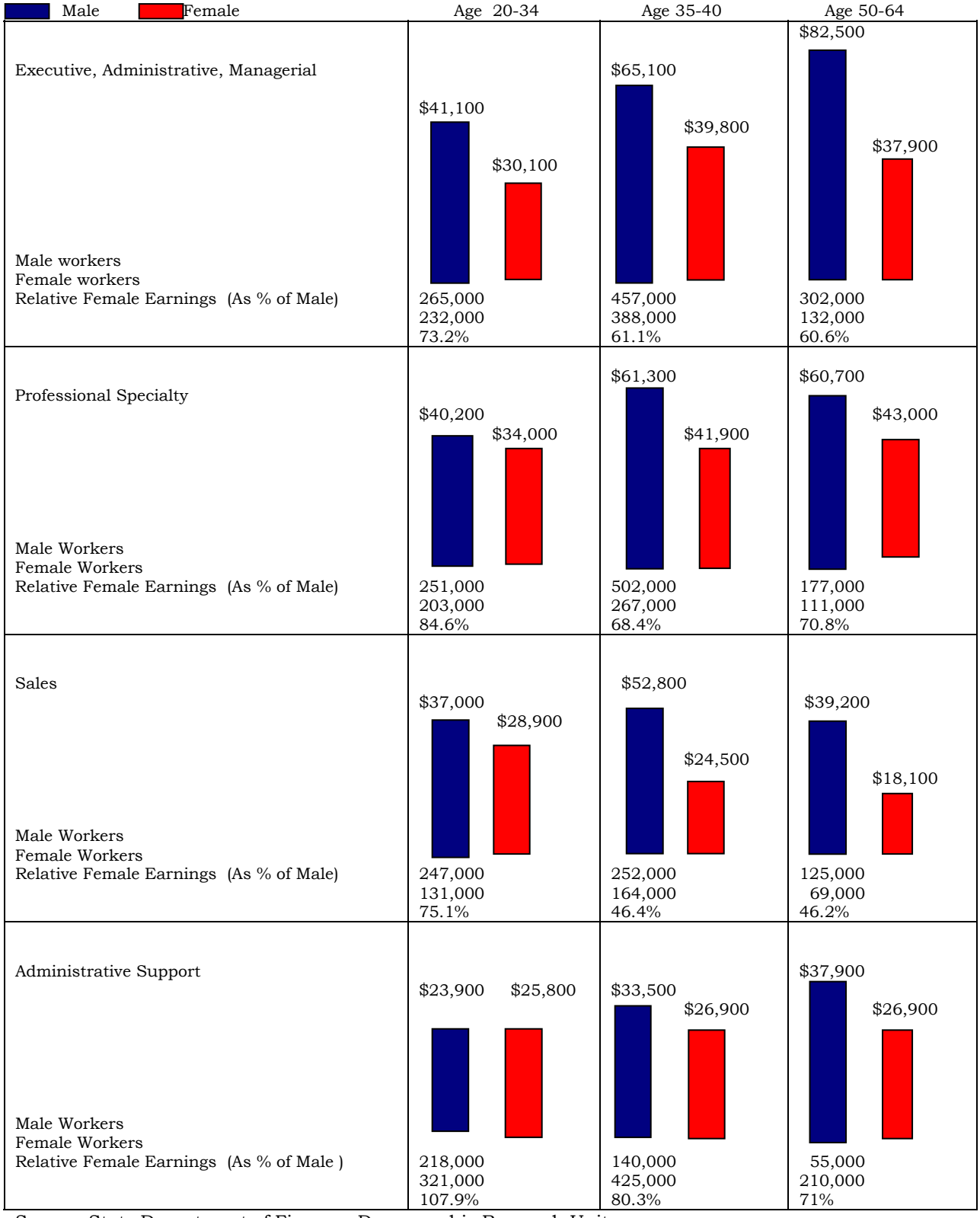
50 "Free Markets, Free Choices: Women in the Workforce," by Katherine Post and Michael Lynch, Pacific Research Institute, December 1995.

51 *Explaining Trends in the Gender Wage Gap*, Yellen, Frankel & Blank, The Council of Economic Advisers, June 1998.

52 Ibid.

Figure 13
MALE VS. FEMALE PAY BY SELECTED OCCUPATIONS AND AGE, 1995

How yearly average salaries compared for men and women in California by selected occupations and age in 1995. The numbers represent civilians who worked 48 or more weeks and 35 or more hours per week.



Source: State Department of Finance, Demographic Research Unit.

Other employment categories used by the census, such as "technicians and related support," were not included in Figure 13 because the sample size of workers in those categories was not large enough to be statistically reliable.

In the four categories listed, full-time working women come closest in earnings to full-time working men in professional specialties (e.g. engineers, lawyers, teachers) and administrative support (e.g. bookkeepers, receptionists, secretaries), especially among younger workers. But the only category where women earn *more* than men is administrative support, among workers ages 20 to 34. Because this data set excludes part-time workers, more of whom tend to be working mothers, it more accurately compares male and female workers by age and job classification. Whether these differences in wages are attributed to discrimination or some other factor remains a question for future public-policy research and possible action.

Comparable Worth: Not Quite Off the Radar Screen

Comparable-worth policy initiatives burst into the political world in the late 1970s. Comparable worth, also referred to as pay equity, is the concept that female-dominated jobs should be compensated similarly to male-dominated jobs requiring comparable levels of skill and responsibility. It means that salaries should be based on qualities such as effort and working conditions relative to all other jobs in an organization -- regardless of whether the jobs are held by women or men. Instead, statistics consistently show that nearly all job categories dominated by women pay less than those dominated by men. These concepts were hotly debated in the 1980s and a number of bills on this subject were passed by the Legislature.

Proponents of comparable-worth reform base their position on studies such as the 1981 landmark report by the National Academy of Sciences that concluded: "...only a small part of the earnings differences between men and women can be accounted for by differences in education, labor force experience, labor force commitment, or other human capital factors believed to contribute to productivity differences among workers..." and that a significant portion of the wage gap is due to the undervaluing of the contribution of women's occupations.[53]

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[53] *Women, Work and Wages: Equal Pay for Work of Equal Value*, Treiman and Hartman, Report by the National Academy of Sciences to the Equal Employment Opportunity Commission, 1981.

Arguments against comparable worth rely on a free-market approach, contending that women have chosen lower-paying fields with flexible schedules to give themselves more time to care for their families. Another argument against comparable-worth reforms is that integration among men and women on the job will gradually correct existing pay inequities.

Comparable-worth bills that became law in California are summarized in the following figure:

Figure 14
Comparable-Worth Laws

	Bill, Chapter #	Author	Description
1976	SB 1051, Ch 1184	Albert Rodda	Amends the California equal-pay-for-equal-work law to include the concept of comparable worth.
1981	SB 459, Ch. 722	Paul Carpenter	Requires the Department of Personnel Administration to analyze annually and provide data on setting salaries for female-dominated state jobs.
1983	ACR 37, Res. Ch. 111	Sally Tanner	Asks the Commission on the Status of Women to study and report annually on pay inequities in the private and public sector and make recommendations for reform.
1983	SB 101, Ch. 641	Bill Lockyer	Requires California public universities to study and report to the Legislature on salaries in female-dominated jobs.
1983	AB 1580, Ch. 906	Johan Klehs	Prohibits local governments from refusing to consider comparable worth as a factor in salary negotiations.
1984	AB 3193, Ch. 814	Tom Hayden	Allows employees to disclose salaries without employer retribution.

The state Department of Personnel Administration (DPA) issued reports in compliance with the Carpenter bill (See Figure 14) in the 1980s and then stopped collecting, analyzing and reporting the data related to female-dominated jobs. The DPA continues to ignore this law (Government Code section 19827.2) despite the Legislature specifically reaffirming its desire in 1996 to receive such a report when it passed Government Code section 7550.5 exempting certain state agency reports from being written [AB 116 (Jackie Speier), Chapter 970]. The report required by Government Code Section 19827.2 was not exempted.

Senator David Roberti picked up where the DPA left off by shepherding consecutive bills through the Legislature to create a commission to study the state civil-service compensation and classifications systems. These bills were vetoed by Governor George Deukmejian.

Comparable worth was like a comet that passed over the Legislature in the 1980s and is now no longer visible, but is still orbiting through the universe. Perhaps this comet is due to pass back over the Legislature in the coming years.

The Glass Ceiling

Right about when the feud over comparable worth died down, the "glass ceiling" debate emerged. The term "glass ceiling" was first coined in a *Wall Street Journal* column, "Corporate Woman," in the late 1980s. The metaphor describes an invisible, impenetrable barrier between women and the executive suite. The glass-ceiling idea was soon extended to minority workers as well as women.

Critics of the glass-ceiling concept say women make up a small percentage of senior management because so few women are in the qualified labor pool, "typically [requiring] a MBA and 25 years in the labor force."[54] Supporters of the glass-ceiling concept point to studies such as the ones done by the federal Glass Ceiling Commission in March 1995[55] and the annual census of top earners in the Fortune 500 companies as compiled by Catalyst, a New York-based women's research group.

The federal Glass Ceiling Commission estimated that in the early 1990s, 95 to 97 percent of senior managers of Fortune 1000 industrial companies and Fortune 500 companies were men; 97 percent were white. For Fortune 2000 industrial and service companies, only 5 percent of senior managers were women.

The Catalyst census of all Fortune 500 companies indicates women's participation as top earners, corporate officers and members of corporate boards of directors is small but growing. In 1995, women comprised 1.2 percent of the five most highly compensated officers such as chair, chief-executive officer and president; in 1997, the figure had moved to 2.5 percent. Female

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[54] "Free Markets, Free Choices: Women in the Work Force," Post and Lynch, Pacific Research Institute, December 1995, p. 15.

[55] "Good for Business: Making Full Use of the Nation's Human Capital," A Fact-Finding Report of the Federal Glass Ceiling Commission, March 1995.

corporate officers such as chief executive officer or chief legal counsel increased from 8.7 percent in 1995 to 10.6 percent in 1997. Service on corporate boards of directors went from 8.3 percent female in 1993 to 10.6 percent in 1996.[56]

Senator Lucy Killea pioneered a one-woman legislative response to the data on the lack of women in top management and the lack of women serving on corporate boards of directors. She successfully authored three measures in the early 1990s related to this topic:

- SB 455 (Chapter 669, 1991) reforms the process for notifying the public of openings on state and local boards and commissions by making these lists available at selected public libraries. (The theory here is more women and minorities will seek out such appointments that often lead to advancements in their own careers if they have timely notice.)

- SB 1690 (Chapter 1264, 1992) requires the Department of Personnel Administration to track glass-ceiling patterns by tabulating and reporting to the Legislature on state salary levels for women and minorities.

- SB 545 (Chapter 508, 1993) directs the Secretary of State's Office to create a registry of distinguished women and minorities available to serve on corporate boards of directors and report to the Legislature on whether the registry is helping women and minorities secure appointments.

The secretary of state, who handles corporate registrations, has yet to implement SB 545 (Corporation Code section 318). At the request of Secretary of State Bill Jones, Senator Quentin Kopp carried SB 1652 in 1998 (Chapter 829). This law authorizes the secretary of state to transfer the registry to the University of California or the California State University, if one of these entities is interested in taking on this task.

In April 1996, the Senate Office of Research did a follow-up study to SB 1690. This study, entitled "Exploring the 'Glass Ceiling' and Salary Disparities in California State Government," found that:

> Eleven percent of men in state civil service earned $60,000 or more. Just 4 percent of women did. Less than 5 percent of men had salaries of $70,000 or

[56] "FACT SHEET: 1997 Catalyst Census of Women Corporate Officers and Top Earners," March 1998 and "Women in Business: A Snapshot," Catalyst INFObrief, Oct. 1997.

> higher. Less than 2 percent of women did. At the very top, 0.7 percent of all male employees in state government made $100,000 or more; 0.2 percent of females did.[57]

If the Legislature continues to monitor this public-sector salary data over time, it will have a better idea whether the glass ceiling is myth or reality in state employment.

Most Mothers With Minor Children Employed in the Labor Force

Today most women with children are in the labor force. By 1997 in the United States, 65 percent of women with children younger than six, and 78 percent of women with children between the ages of six and 17 were in the labor force (see Figure 15).[58] According to the U.S. Census Bureau, 55 percent of women aged 15 to 44 were in the labor force within a year of giving birth in 1995.[59]

In "Working Women Count! A Report to the Nation" the Women's Bureau in the U.S. Department of Labor undertook a massive survey of working women that began in May 1994. The two top-ranking priorities for workplace reforms were improving pay scales and health care insurance for all.[60] This survey also found widespread difficulty among working women in balancing work and family obligations. Sixty-three percent of mothers with children age 5 and under and 61 percent of single mothers strongly supported paid leave for working parents to care for children or relatives. Fifty-six percent of women with children age 5 and under said "finding affordable child care" was a serious problem.

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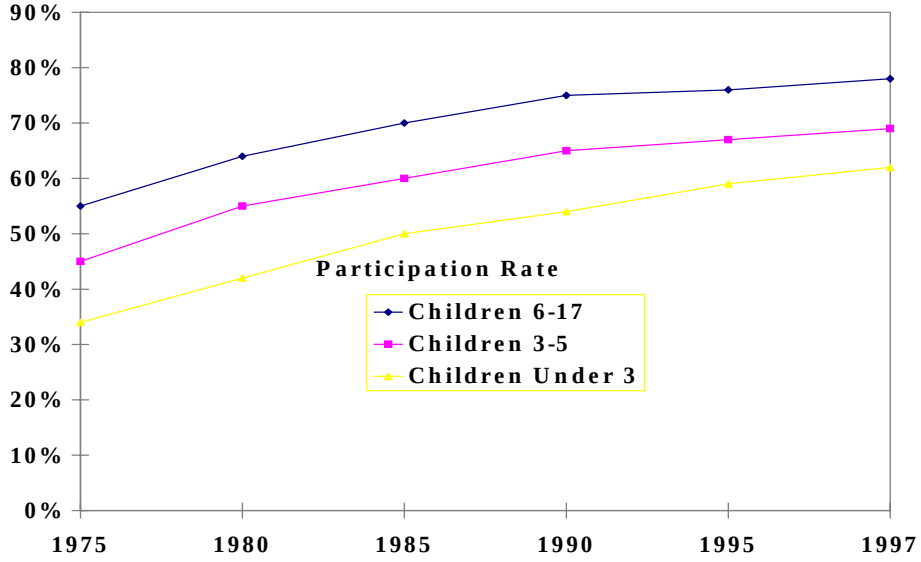
57 *Exploring the "Glass Ceiling" and Salary Disparities in California State Government*, Rebecca LaVally, California Senate Office of Research, *http://www.sen.ca.gov/sor*, April 1996, p. 5.

58 "Labor Force Status of Mothers by Age of Youngest Child, March 1975-97," Bureau of Labor Statistics, U.S. Dept. of Labor.

59 *Fertility of American Women: June 1995*, Census Bureau, U.S. Dept. of Commerce.

60 " Working Women Count: A Report to the Nation," Executive Summary, Women's Bureau, U.S. Dept. of Labor.

Figure 15
Working Mothers with Minor Children, 1975 – 1997



Source: "Labor Force Status of Mothers by Age of Youngest Child, March 1975-97," Bureau of Labor Statistics, U.S. Department of Labor.

When Working Women Get Pregnant

Most pregnancy-protection laws were passed at the state and federal levels in the late 1970s. The California law generally protects pregnant women working for private and public employers with five or more employees. The federal Pregnancy Discrimination Act of 1978 applies to employers with 15 or more employees.

California protections include the ability to take a doctor-certified disability leave before or after the baby is born, the right to return to a job after taking a disability leave for four months or less, and access to a temporary transfer to a less strenuous or hazardous position during the pregnancy.[61] See "Family Leave," page 45, for related protections.

[61] There are exceptions under the law. In some cases an employer does not have to guarantee an employee return rights to her job or does not have to grant a temporary transfer (Gov. Code Section 12945 and Ca. Code Regs., Title 2, Section 7291) to a pregnant worker.

Figure 16
Employment and Pregnancy-Related Laws

	Bill, Chapter #	Author	Description
1973	AB 809, Ch. 1026; SB 652, Ch. 1163	Wadie Deddeh George Moscone	Expands disability benefits to cover complications due to pregnancy.
1975	AB654, Ch. 423	Bill Lockyer	Allows state employees up to one year for pregnancy and childbirth leave.
1975	AB 1060, Ch. 914	Howard Berman	Protects school district employees from pregnancy discrimination.
1976	AB 3015, Ch. 479	Bill Lockyer	Gives state university employees a one-year pregnancy/childbirth leave.
1976	AB 3881, Ch. 1182	Vic Fazio	Extends disability benefits to routine pregnancies and childbirth.
1978	AB 1960, Ch. 1321	Howard Berman	Adds pregnancy, childbirth and related medical conditions to conditions protected under the Fair Employment and Housing Act (FEHA).
1980	AB 290, Ch. 619	Maxine Waters	Bars sterilization as a condition of employment.
1990	SB 1027 Ch. 15	Nick Petris	Clarifies the definition of "sex" under the FEHA's prohibitions on discrimination to include pregnancy, childbirth or related medical conditions.
1992	AB 2865, Ch. 907	Jackie Speier	Allows temporary transfer rights to pregnant women working for employers with five or more employees.
1993	AB 675, Ch. 711	Gwen Moore	Clarifies that harassment based on pregnancy is sexual harassment under the FEHA.

Pregnant women who work for employers with five or more employees who experience discrimination due to pregnancy can turn to the state Department of Fair Employment and Housing (DFEH) for assistance. Pregnant employees who work for employers with less than five employees, and who are discriminated against, can file a private lawsuit for pregnancy-related sex discrimination under Article 1, section 8 of the California Constitution.[62]

Option for Action: The Legislature might consider expanding the pregnancy provisions in the Fair Employment and Housing Act to cover all workplaces (not just those with five or more employees), which would give all pregnant workers with less financial resources an administrative remedy.

Workers Who Breastfeed Their Infants

With more new mothers returning to the work force soon after the birth of a child and with the push from the American Academy of Pediatrics to breastfeed during the first year of life, more employers are faced with the issue of accommodating lactating employees. According to the June 1998 issue of *State Legislatures*, Minnesota recently passed a law requiring employers to provide a private place to express milk and to provide unpaid daily break times for this purpose. Legislation was also introduced in Congress (H.R. 3531, Carolyn Maloney) in 1998 to encourage employers to support workplace lactation programs and to allow credit for employer expenses to provide appropriate breastfeeding environments. California law-makers may be looking at similar legislative proposals in the near future.

California passed AB 157 in 1997 (Antonio Villaraigosa, Chapter 59), which affirms a woman's right to nurse her child in most private or public locations "where the mother and the child are otherwise authorized to be present." This legislation does not necessarily provide protections for women to breastfeed in the workplace, if the child's presence is not authorized.

Family Leave

When the concept of family leave was first introduced in California it covered time off without pay for childbirth or adoption. It was expanded to include fathers as well as mothers, to cover all workers caring for a seriously ill family member, to include care for

[62] *Badih v. Meyers*, 36 Cal. App. 4th 1289 (1995).

a newly placed foster child, and to permit medical leave for the employee. Family leave is separate from pregnancy-disability leave. With the aging of the baby-boom generation, many more workers will probably utilize family-leave policies to care for an aging parent or for their own medical crises. When a worker takes a family leave, the law generally guarantees that worker the right to return to the same or a comparable position with no break in service for purposes of longevity or seniority.

State and federal family-leave laws were hotly debated in the 1980s and early 1990s. Opposition to the proposed laws generally came from the business community. Some groups, such as the Chamber of Commerce, predicted family leave would cost corporate America billions of dollars a year. After much wrangling and many compromises, a family leave law was passed in California in 1991. The California Family Rights Act was followed closely by the federal Family and Medical Leave Act of 1993.

Preliminary findings, as cited in the 1996 report from a bipartisan congressional commission, are that the federal Family and Medical Leave Act has proven effective for employees and has had little or no impact on businesses.[63]

The original California Family Rights Act of 1991 (AB 77, Gwen Moore, Chapter 463) required employers with 50 or more employees to grant an unpaid family leave of up to four months to eligible employees. The federal Family and Medical Leave Act of 1993 requires businesses that employ 50 or more people to allow up to 12 weeks a year for an unpaid family or medical leave. Unlike the original state law, the federal law required the employer to continue paying health benefits during the leave. Just after the federal law passed in 1993, California enacted legislation (AB 1460, Gwen Moore, Chapter 827) to conform, in most ways, the California law with the federal law.

California's family-leave law now requires employers with 50 or more employees to grant an unpaid leave of up to 12 weeks annually to eligible employees. Health benefits are covered during the leave. Eligible employees are entitled to take a family leave of up to 12 weeks, as well as a pregnancy-disability leave of up to four months, depending on the actual period of disability.

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[63] "A Workable Balance: Report to Congress on Family and Medical Leave Policies," Commission on Leave, Sen. Christopher Dodd, Chair, May 1996.

Bills Introduced in 1998 to Expand the Family-Leave Law Failed to Win Enactment

Three bills were introduced in 1998 to expand the family-leave law in California. They were:

- SB 1506 (Tom Hayden) -- would have expanded the family-leave law to include employees who are caring for a seriously ill housemate who relies on the employee for immediate care and support. This measure failed to pass.

- AB 480 (Wally Knox) -- would have required employers who provide sick leave to their employees to permit their employees to use their sick leave to attend to an ill child, spouse or parent. This measure failed to pass. Amended into AB 15 (W. Knox), which was vetoed by Governor Wilson.

- AB 1870 (Sheila Kuehl) -- would have expanded the purposes for which a family leave may be taken by an employee to include care of the employee's child if unable to attend school or day care for health reasons. Vetoed by the governor.

Options for Action: Additional ideas for expanding family leave include making the law applicable to employers with fewer than 50 employees, providing paid leave, and allowing victims of domestic violence to use the leave. One proposal under discussion for providing limited paid leave would be to allow individuals taking a family leave to tap into the state disability insurance fund.

Leave to Visit or Volunteer in Child's School

Working parents often have a hard time attending their children's school functions during their working hours. California has addressed this issue by adopting four laws that help many working parents. Besides giving some relief to parents, these laws have other public-policy benefits. Research tells us that parent involvement in a child's education -- not socio-economic status, culture or ethnic group -- is the best family-related predictor of a student's achievement in school.[64]

The four successful bills addressing working parents and school responsibilities are:

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[64] "Parent Involvement in Schools," EdSource Report, EdSource, Menlo Park, CA, September 1994.

- AB 126 (Maxine Waters) -- Chapter 213, 1989 -- prohibits employers from discharging or discriminating against an employee for taking time off to appear at a child's school when the child has been suspended. The parent or guardian must give reasonable notice to the employer.

- AB 3782 (Curtis Tucker) -- Chapter 859, 1990 -- prohibits employers of 25 or more employees from discharging or discriminating against an employee for taking off four hours each school year, per child, to visit the school of the child. A parent or guardian must give reasonable notice to the employer. Employees must first use up vacation, personal leave or compensatory time off.

- AB 2590 (Delaine Eastin) -- Chapter 1290, 1994 -- prohibits employers of 25 or more employees from discharging or discriminating against an employee for taking up to *40 hours* per school year, not exceeding eight hours in any calendar month, to participate in any of their children's school activities. A parent, guardian, or *grandparent with custody* must give reasonable notice to the employer. Employees must first use up vacation, personal leave or compensatory time off and the employees may use time off without pay, if the employer provides this. Requires the state of California to comply with this law for state employees.

- AB 47 (Kevin Murray) -- Chapter 157, 1997 -- expands AB 2590 to include parental participation in activities at licensed day-care facilities, and revises the number of hours from 40 per school year to 40 hours each year.

Options for Action: Because many working parents are unaware of these laws, the Legislature might consider ways to provide better notice of them. The Legislature might also consider making the school-leave law applicable to employers with fewer than 25 employees and granting tax credits to businesses that provide such a leave.

Sexual Harassment in the Workplace

When sexual harassment in the workplace was first characterized as sex discrimination under the federal Civil Rights Act of 1964 in a case that reached the federal district court in 1975, the judge said a supervisor's repeated verbal and sexual advances were not

sex discrimination.[65] Slowly the case law evolved to recognize sexual harassment as sex discrimination, and in California a number of laws were enacted in this area. These laws are summarized in Figure 17.

Figure 17
Laws Concerning Sexual Harassment in the Workplace

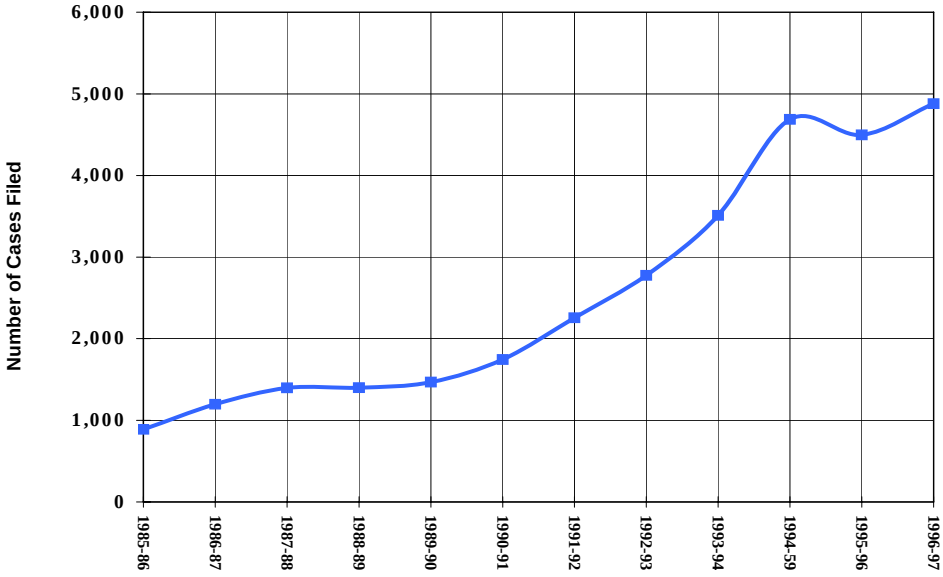
	Bill, Chapter #	Author	Description
1970	AB 22, Ch. 1508	Charles Warren	Adds sex discrimination to the Fair Employment Practices Act.
1982	AB 1985, Ch. 1193	Patrick Johnston	Explicitly adds sexual harassment to the FEHA.[66]
1984	SB 2012, Ch. 1754	Diane Watson	Strengthens sexual-harassment protections and makes the law applicable to *all* employers (not just employers with five or more workers).
1984	AB 3883 Ch. 1058	Gloria Molina	Makes Unemployment Insurance available to workers who left their jobs due to sexual harassment.
1985	SB 1057, Ch. 1328	Bill Lockyer	Generally excludes evidence of sexual conduct in sexual-harassment, sexual-assault and sexual-battery cases.
1992	AB 311, Ch. 911	Gwen Moore	Restores the authority of the FEHC[67] to award actual damages up to $50,000, but not punitive damages, in employment-discrimination cases.
1992	AB 2264, Ch. 908	Jackie Speier	Requires employers to post and distribute DFEH[68] information on sexual harassment.
1993	AB 675, Ch. 711	Gwen Moore	Clarifies that harassment based on pregnancy is sexual harassment under the FEHA.
1994	SB 612, Ch. 710	Tom Hayden	Prohibits sexual harassment that occurs as part of a business, service or professional relationship.

[65] *Corne v. Bausch & Lomb* (1975), as cited in "A Brief History of Sexual-Harassment Law," Susan Crawford, *Training*, August 1994.
[66] Fair Employment and Housing Act.
[67] Fair Employment and Housing Commission.
[68] Department of Fair Employment and Housing.

Since the 1991 watershed confirmation hearings for Clarence Thomas in which Anita Hill alleged she had been sexually harassed by the Supreme Court nominee, sexual-harassment claims have increased exponentially. In California, aggrieved workers may seek compensation through the DFEH or by bringing a court action, generally after obtaining a right to sue letter from the DFEH. Last year, the record 4,892 sexual-harassment complaints lodged with the DFEH amounted to more than 25 percent of all employment-discrimination complaints filed.[69] Figure 18, below, illustrates a growth in sexual-harassment complaints filed with the DFEH.

For employees in California with a particularly strong case, a court action is preferable to bringing an administrative complaint because there are no limits on damages as there are before the Fair Employment and Housing Commission (FEHC). For instance, in May 1998, the California Court of Appeal upheld a $3.5 million judgment (mostly punitive damages awarded against the employer) that arose from a former secretary's sexual-harassment lawsuit against a law-firm partner.[70]

Figure 18
Sexual-Harassment Cases Filed with the Department of Fair Employment and Housing, 1985-1997



Source: Department of Fair Employment and Housing, State of California.

69 State Department of Fair Employment and Housing.
70 *Weeks v. Baker & McKenzie,* 63 Cal. App. 4th 1128 (1998).

Two recent U.S. Supreme Court cases affirm potential employer liability when manangers sexually harass subordinates. Employers can successfully defend themselves from liability by showing:

- A sexual-harassment policy was communicated to workers;
- Workers had a means for filing grievances;
- There was a prompt, affirmative response to a harassment complaint; and/or
- The complaining worker "unreasonably failed" to report the problem. [71]

These burgeoning numbers of sexual-harassment cases have prompted many companies to seek sexual-harassment insurance policies. Such a trend speaks to an on-going problem and the need for employment practices that protect those in the workplace.

Where Women Work

Clerical work, government jobs, teaching, nursing, food service and sales are popular fields of work for women today, as they were in past generations. But women have made substantial gains in formerly non-traditional occupations such as architecture, butchery, clergy and law enforcement.[72] More women are graduating from college and obtaining professional degrees in business, law and medicine. (See "Women Earning More Undergraduate and Graduate Degrees," page 22.)

Women, however, are still under-represented in skilled crafts such as carpentry, electrical work and plumbing, and the pipeline leading to these jobs includes few women. For instance in 1995 in California, the percentage of women in state-registered apprenticeship programs was 11 percent.[73]

When gender was added to the Fair Employment Practices Act in 1970 (AB 22, Charles Warren, Chapter 1508), discrimination in employment, apprenticeships and training programs by employers with five or more employees was outlawed.

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[71] *Faragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998) and *Burlington Industries Inc. v. Ellerth*, 118 S. Ct. 2257 (1998).

[72] U.S. Dept. of Labor, Women's Bureau.

[73] *Apprenticeships in an Era of Welfare to Work: On-the-Job Career Training*, Elaine Graalfs, Senate Office of Research, January 1998. *http://www.sen.ca.gov/sor*.

A 1976 bill by Howard Berman (AB 3676, Chapter 1179) required affirmative action to bring women and minorities into public-sector apprenticeship programs; the passage of Proposition 209 calls into question the state constitutionality of this affirmative-action law.

Most other laws encouraging women in nontraditional fields are federal initiatives. Federal statutes such as the Job Training Partnership Act and the Perkins Vocational Education Act have done the most to bring women into nontraditional fields of employment. State efforts primarily involve administering these federally funded programs.

Growth in Women-Owned Businesses

Women-owned businesses in California comprise 36 percent of all businesses and generate 21 percent of the state's sales and receipts, according to census data first collected in 1992.[74]

Before 1992, data collection on women-owned businesses in California was spotty, but what data does exist indicates women-owned businesses have grown considerably.[75] The state of California adopted several bills in the late 1980s that may have contributed to the growth in women-owned businesses.

Public Contracting With Women- and Minority-Owned Businesses

Employment discrimination on the basis of sex, marital status, physical handicap or medical condition was outlawed on public works projects in 1976 legislation by Assemblymember Herschel Rosenthal (AB 3365, Chapter 1174).

Programs to aid businesses owned by racial minorities and stimulate growth of these businesses were enacted beginning in the late 1960s. Adding women-owned businesses to programs and statutes in this area was a more recent phenomenon.

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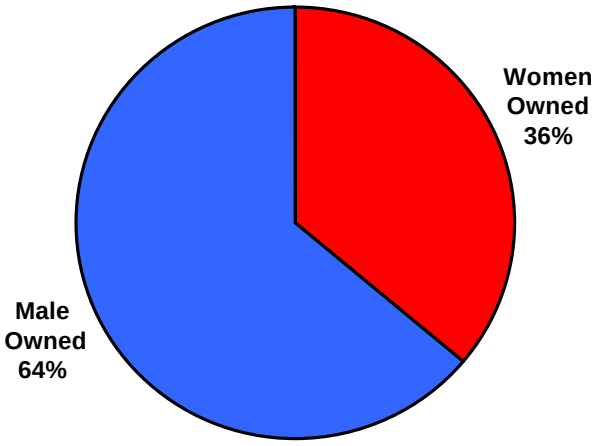
[74] "1992 Survey of Minority-and-Women-Owned Businesses," California Dept. of Finance, Demographics Research Unit, Winter 1997.

[75] "California Council to Promote Business Ownership by Women," Report to the Governor and Legislature as required by AB 1488 (Jackie Speier), Chapter 1081-1992, January 1996.

Figure 19
Women-Owned Businesses in California in 1992



Source: "1992 Survey of Minority-and-Women-Owned Businesses," California Dept. of Finance, Demographics Research Unit, Winter 1997.

The bellwether bill in the area of public contracting with women- and minority-owned businesses in California was AB 1933 by Assemblymember Maxine Waters, which passed in 1988 (Chapter 61). (See also, AB 1717, M. Waters, Chapter 1229, 1989.) It required state agencies that contract for goods and services to set goals for providing at least 5 percent of their contracts to women-owned business enterprises and at least 15 percent to minority-owned business enterprises.

The California contracting program for women- and minority-owned businesses has a checkered history. In 1991, Senate President pro Tempore David Roberti authored SB 718, Chapter 1208, requiring the University of California to do a statistical-disparity study of minority- and women-owned businesses to compare the number of such businesses in the state and the percentage actually garnering state contracts. Because no state funds were appropriated in the bill, the study has never been done. Senator Richard Polanco has continued to spearhead efforts to fund such a disparity study.

The record of each state agency in meeting the participation goals for contracting with women-owned businesses has shown improvement, increasing from a statewide average of 2 percent in

1991-92[76] to 8 percent in 1994-95.[77] Statewide data for other years is not available from the state Office of Small and Minority Businesses.

Because of a lawsuit filed before the passage of Proposition 209 and decided in March 1998 (*Monterey Mechanical v. Wilson*) and because of the passage of Proposition 209 in November 1996, the Maxine Waters legislation is no longer being enforced by the state and the state will no longer collect data on women- and minority-owned businesses contracting with state agencies. The Wilson administration continues to do outreach to small businesses, but no longer targets women- or minority-owned businesses. Legislation introduced in 1998 (AB 1664, Kevin Murray) to establish statewide participation goals of not less than 30 percent for state contracting with small businesses was vetoed by Governor Wilson.

The Legislature in the years ahead will continue to grapple with issues such as a disparity study, collection of data and outreach to overcome past discrimination.

Conclusion

The influx of women into the labor force means the employment issues raised in this report will continue to capture the attention of lawmakers. Future trends in legislation will probably include finding ways to make the workplace more friendly for working parents. According to the Families and Work Institute, men are sharing more in child-rearing responsibilities.[78] Since more men and women are feeling the pinch of balancing career and family, pressure will probably increase to expand family-leave and school-leave policies.

California faces special challenges with the implementation of Proposition 209. Proposition 209 bars discrimination or preferential treatment based on gender or race in public employment, contracting and education. The federal courts have upheld the overall validity of Proposition 209; however, it's expected that many more cases will be brought related to specific programs such as "affirmative-action" programs designed to bring

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[76] "California's $4 Billion Bottom Line: Getting Best Value Out of the Procurement Process," Little Hoover Commission, March 1993.

[77] Ibid and Office of Small and Minority Businesses, State Department of General Services.

[78] *The 1997 National Study of the Changing Workforce*, Families and Work Institute, New York, April 1998.

more women and minorities into state jobs or otherwise encourage their economic success.

The Legislature and the courts will be sorting out the meaning and how to implement the "preference" prohibition for many years to come. For instance, the Legislature and the courts will be weighing what kinds of affirmative-action programs are permissible and what kinds of data will be collected by state and local agencies related to women and minorities in employment and contracting. In March 1998, Governor Wilson directed the state to stop doing outreach and stop collecting data on women- and minority-owned businesses that contract with the state.

Conclusion

California has experienced a burst of legislative activity around women's equality since the 1960s. Lawmakers have passed women's civil-rights legislation affecting almost every aspect of public life.

These statutes, when weighed with equal-rights protections in California's Constitution, have given California the equivalent of a state equal-rights amendment, although a federal version failed to win ratification 17 years ago. Whether Proposition 209, passed by the voters in November 1996, now diminishes constitutional protections for California women in the areas of public contracting, employment and education has not been addressed by the Legislature or the courts.

A major civil-rights advancement chronicled in this report has been the passage of state and federal laws insuring equal educational opportunities for girls and women in school. Significant advancements by girls and women on many education fronts -- such as more enrollments in advanced math and science courses in high school, increased college-eligibility rates, higher college-graduation rates, more college degrees in traditionally male-dominated fields of study and more participation in organized sports -- are clearly linked to the passage of education-equity bills.

Milestone employment laws in California, such as barring employment discrimination based on sex, marital status or pregnancy and allowing workers family leave, have opened up the California workplace. Since 1960, married women, women with children and younger women have entered the workforce in huge numbers. Nearly three-quarters of American women between 25 and 54 years old are working.

The influx of women into the labor force means the employment issues raised in this report will continue to capture the attention of

lawmakers. Future trends in legislation will probably continue to move toward alleviating some of the workplace stresses associated with balancing families and careers.

Because of the unique questions raised by the passage of Proposition 209, the Legislature and the courts will be looking at what kinds of affirmative-action programs are permissible and what kinds of data will be collected by state and local agencies related to women and minorities in employment, contracting and education.

The Girls Report, published in 1998 and based on a review of over 200 studies nationwide, tells us girls are catching up with boys in positive and negative ways.[79] Many of these positives are reflected in the chapter on education, which documents how girls are breaking through gender stereotypes. Some of the negative outcomes are that girls are smoking, drinking and using drugs as much as boys; girls still lag far behind boys in participation in sports; and girls are too frequently the victims of rape, sexual abuse and sexual harassment.

Legislation responsive to the next phase of the women's movement may provide additional strategies for girls to catch up with many of the successes boys enjoy, such as more participation in sports, and for boys to catch up with many of the positive advancements made by girls, such as higher college-eligibility rates.

[79] *The Girls Report: What We Know and Need to Know About Growing Up Female*, Lynn Phillips, National Council for Research on Women, New York, 1998.

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Kate Sproul,
February 1999