

From: [Board of Supervisors, \(BOS\)](#)
To: [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [BOS Legislation, \(BOS\)](#); [Wong, Linda \(BOS\)](#)
Subject: FW: URGENT: Continuance Requested on SHARP Legislation - File #180480
Date: Tuesday, September 04, 2018 12:38:21 PM
Attachments: [SKM_C75918090411420.pdf](#)

From: Cervantes, Julia (DAT)
Sent: Tuesday, September 04, 2018 11:43 AM
To: Ronen, Hillary <hillary.ronen@sfgov.org>
Cc: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Breed, London (MYR) <london.breed@sfgov.org>; BOS-Legislative Aides <bos-legislative_aides@sfgov.org>; Karunaratne, Kanishka (MYR) <kanishka.cheng@sfgov.org>; Quigley, Nathan (DAT) <nathan.quigley@sfgov.org>
Subject: URGENT: Continuance Requested on SHARP Legislation - File #180480

Please see the attached letter from the Municipal Attorney's Association. We request a continuance of your second reading the SHARP legislation.

Best regards,

Julia Cervantes
Assistant District Attorney
Homicide Unit
Office of the District Attorney
850 Bryant Street, Rm. 322
San Francisco, CA 94103
Tel: 415 553-1682

The information contained in this electronic message may be confidential and may be subject to the attorney-client privilege and/or the attorney work product doctrine. It is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, you are hereby notified that any use, dissemination or copying of this communication is strictly prohibited. If you have received this electronic message in error, please delete the original message from your e-mail system. Thank you.

SAN FRANCISCO
 **MUNICIPAL ATTORNEYS ASSOCIATION** 

September 4, 2018

Supervisor Hillary Ronen
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Re: San Francisco Municipal Attorneys Association
SHARP Ordinance

Supervisor Ronen:

We write you today to voice several concerns with the current structure of Ordinance 180480, authorizing the creation of the Office of Sexual Harassment and Assault Response and Prevention and request that you delay the second reading to consider the comments of the employees of the various city agencies that will be tasked with implementing it. As advocates and attorneys who work with survivors of sexual assault, harassment, domestic violence, elder abuse and child abuse, we commend your focus on these issues and are grateful that you have shone a spotlight on such important issues. However, after reviewing the specific language of the ordinance, we believe that the proposed structure of the new office will have unintended consequences that may serve to hinder investigations into sexual assault or harassment and harm the rights of the survivors that the ordinance is designed to promote. Because of the speed with which the ordinance has been moved through committee to the full Board of Supervisors, we do not believe that there has been a meaningful opportunity for these and other such concerns to be appropriately evaluated. We ask that you consider the input of the professionals who work in the field with survivors of sexual assault and give them the weight deserving of the subject.

We are requesting a continuance to ensure the Office protects the rights of survivors and the successful prosecution of sexual assaults. We are mindful that all the agencies involved in this process must work together for SHARP to be a success. But by requiring city employees including prosecutors and public defenders to attend meetings where we will be asked to share information that would violate our obligations under our legal and ethical obligations, we will be setting this work back, not moving it forward.

To achieve the stated goal of the Ordinance, the member meeting with the complainant is compelled and it requires a direct interaction between the complainant and the knowledgeable employee. Undoubtedly the specific facts of the matter and the complaint will be discussed. As constructed, the discussion will potentially include specific members of the Office, police officers, prosecutors, public defenders, and perhaps policy makers.

The comments of the survivor with members of the prosecution team (police and district attorney) may very well be deemed witness statements thus providing additional criminal discovery requirements. Interviews with a survivor or witness triggers the requirement that the members of the prosecution team, be it the attorney or the police officer, must document the statements and conversations as well as the identity of those present. (*Roland v. Superior Court* (2004) 124 Cal. 4th 154). Any statement of a survivor will surely become discoverable by the defendant in a criminal prosecution and would not be confidential. If the person attending the meeting on behalf of the SFDA's office is the Assistant District Attorney who is prosecuting the matter, that person would become a witness in the case. This would be in violation of Professional Conduct Rule 5-210 (the duty not to become a witness in a matter you are handling). This would also not serve the survivor, who may have formed a relationship of trust with the assigned prosecutor only to have that person removed from the case.

A recorded interview, when the complainant is a part of the interview, could very well result in the disclosure of the witness statements to the defense; this action could well damage the criminal case. Moreover, if there is an implication that the officer's conduct is criminal, the Office may need to provide immunity from prosecution to require the officer to tell his/her story. These types of issues need to be raised at this time for the Ordinance to achieve its seeming ultimate goals (1) enforcement of the sexual assault laws, (2) an effective prosecution, (3) an informed sexual assault victim, and (4) protection of the rights and responsibilities of the prosecution team.

On behalf of the MAA, we are incorporating by reference the well-researched letter of the Chief Assistant District Attorney, Sharon Woo. Ms. Woo's letter to Susan Gard from the department of Human Resources articulates the state laws regarding her office's rights and responsibilities as they represent the trial arm of the prosecution team. The letter raises the concerns that the Ordinance could be misconstrued as allowing SHARP to require responses about, supervise, or encroach upon the SFDA Office's investigative and prosecutorial functions including but not limited to gathering evidence, making charging decisions, and establishing policies and training for employees regarding these investigative and prosecutorial functions. (See Gov't Code §§ 26500-26509; Pen. Code § 917; *Dix v. Superior Court* (1991) 53 Cal.3d 442, 451; *Pitts v. Cty. of Kern* (1998) 17 Cal.4th 340, 345, 556-366; *Hicks v. Bd. Of Supervisors* (1977) 69 Cal.App.3d 228, 240-241.)

Notably, to the extent that SHARP could compel the SFDA's Office and its employees to provide information about any of these matters, the Ordinance impermissibly interferes with the SFDA's investigative and prosecutorial functions as conferred by the State. See *Rivero v. Superior Court* (1997) 54 Cal. App. 4th 1048, 1058-1060; *Hicks v. Bd. Of Supervisors, supra*.

We are aware that the Ordinance states that nothing in it shall be construed to conflict with State or Federal law or with the provisions of the City Charter or to interfere with the investigative and prosecutorial functions under State law; however, it is important to clarify this position given the broad powers granted to SHARP as the Ordinance is contemplated. Furthermore, while attendance at a SHARP meeting might be required, the SFDA, as a state actor, shall not be required to stay or participate in the meeting if it would violate or undermine our ability to investigate or prosecute.

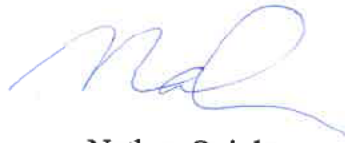
We are also concerned with the disciplinary component and potential punishment for failure to “cooperate” with SHARP. The Ordinance fails to define the conditions of cooperation as well as the standard to assess that determination. If failure to be responsive qualifies, we find ourselves in an untenable position where we choose between being unresponsive and triggering discipline as prescribed by the Ordinance, and being responsive and potentially violating our State Constitutional responsibilities and triggering other disciplinary consequences.

The Municipal Attorneys Association has great concern with the confidentiality of the communication between members of SHARP and the survivors. Designation of a person as a sexual assault counselor does not immunize records and communications from subpoena. The purpose of California Evidence Code 1035.2 is to provide sexual assault counseling, services, and assistance. SHARP would exist for investigative and advocacy of survivors. As such, the ability to pierce the privilege is greater. The defendant’s constitutional right to due process will be weighed against the privilege. For a survivor to participate in the SHARP process under the pretense that their counseling and involvement would be confidential, only to have all of that information exposed would be a great disservice.

We also note the danger of duplicative systems for survivors. Instead of creating multiple avenues for survivors to find justice and to have their voice heard, we should be acting

to streamline the process. To have a survivor recount their traumatic experience to multiple systems does not serve the survivor. We write this letter in hopes to become part of the conversation that can lead to a stronger SHARP.

Sincerely,



Nathan Quigley

Vice President, Municipal Attorneys Association

cc. Mayor London Breed
Board of Supervisors