

AMENDED IN ASSEMBLY APRIL 13, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 550**

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**Introduced by Assembly Member Goldberg**

February 16, 2005

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*An act relating to the Department of Corrections. An act to add Article 3 (commencing with Section 2635) to Chapter 3 of Title 1 of Part 3 of the Penal Code, relating to correctional institutions.*

LEGISLATIVE COUNSEL'S DIGEST

AB 550, as amended, Goldberg. ~~Department of Corrections: report~~  
*Correctional institutions: sexual abuse.*

*Existing law provides that an employee with a department, board, or authority under the Youth and Adult Correctional Agency or a facility under contract with a department, who, during the course of his or her employment directly provides treatment, care, control, or supervision of inmates, wards, or parolees, and who engages in sexual activity with a consenting adult who is an inmate, ward, or parolee, is punishable by a fine not exceeding \$1,000, imprisonment in a county jail for a period not exceeding 6 months, or by both that imprisonment and fine, or by a fine of not more \$10,000, imprisonment in a county jail for a period not exceeding one year or in the state prison, or by both that fine and imprisonment. Existing law provides that a 2nd or subsequent violation of these provisions is punishable by imprisonment in the state prison and that anyone who is convicted of a felony violation of this section shall be terminated, as specified, and shall not be eligible to be hired or reinstated by a department, board, or authority within the Youth and Adult Correctional Agency.*

*This bill, the Sexual Abuse in Detention Elimination Act, the purposes of which would be to protect all inmates and wards from*

*sexual abuse while held in institutions operated by the Department of Corrections and the Department of the Youth Authority would require those agencies to perform background checks of all employees and provide that they may not hire any person who has been convicted of a sexual abuse related offense for any position that involves inmate or ward contact.*

*This bill would also require these agencies to provide training to their corrections staff that includes, among other things, the communication of a clear statement that sexual abuse of inmates and wards is a crime that will be reported to law enforcement. This bill would require these agencies to provide inmates and wards with information in the form of a pamphlet describing the department's policies related to sexual conduct and the channels by which abuse should be reported.*

*This bill would require the Department of Corrections and the Department of the Youth Authority to adopt specified policies, practices, and protocols related to the placement of inmates, physical and mental healthcare of inmate victims, and investigation of sexual abuse.*

*This bill would also create the Office of the Sexual Abuse in Detention Elimination Ombudsperson to monitor progress towards eradication of this problem in Department of Corrections and Department of the Youth Authority facilities.*

*This bill would require the Department of Corrections and the Department of the Youth Authority to develop guidelines for allowing outside organizations and service agencies to provide resources and counseling to inmates and wards and to provide information to other agencies and their staff who may encounter survivors of sexual abuse in detention intended to increase their awareness of and sensitivity to the issue of sexual abuse in detention.*

~~Existing law provides that the Department of Corrections is responsible for the administration and regulation of the state prisons.~~

~~This bill would require the Department of Corrections to report to the Legislature by June 1, 2006, the steps that will be taken to address and prosecute any rape of any inmate, regardless of whether the rape is perpetrated by another inmate or by a prison guard.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. The Department of Corrections is hereby~~  
2 ~~directed to report to the Legislature, no later than June 1, 2006,~~

3 *SECTION 1. This act shall be known and may be cited as the*  
4 *Sexual Abuse in Detention Elimination Act.*

5 *SEC. 2. The Legislature hereby finds and declares that the*  
6 *purposes of the Sexual Abuse in Detention Elimination Act*  
7 *include, but are not limited to, all of the following:*

8 *(a) To protect all inmates and wards from sexual abuse while*  
9 *held in institutions operated by the Department of Corrections*  
10 *and the Department of the Youth Authority.*

11 *(b) To make the prevention of sexual abuse in detention a top*  
12 *priority in all state detention institutions.*

13 *(c) To ensure that the Department of Corrections and the*  
14 *Department of the Youth Authority develop and implement*  
15 *protocols and procedures designed to effectively respond to*  
16 *sexual abuse in detention while protecting the safety of victims.*

17 *(d) To ensure that data collection concerning sexual abuse*  
18 *across all institutions is accurate and accessible to the public.*

19 *(e) To increase the accountability of the Department of*  
20 *Corrections and the Department of the Youth Authority officials,*  
21 *wardens, and other staff who fail to detect, prevent, reduce, and*  
22 *respond to sexual abuse in detention.*

23 *(f) To protect the 8th Amendment right of inmates and wards*  
24 *to be free from cruel and unusual punishment as guaranteed by*  
25 *the United States Constitution.*

26 *(g) To protect the right of inmates and wards to be free from*  
27 *cruel and unusual punishment as guaranteed by Section 24 of*  
28 *Article 1 of the California Constitution.*

29 *(h) To establish an Office of the Sexual Abuse in Detention*  
30 *Ombudsperson to monitor the prevention of and response to*  
31 *sexual abuse that occurs in the Department of Corrections and*  
32 *the Department of the Youth Authority institutions.*

33 *(i) To increase the efficiency of state expenditure on*  
34 *corrections, correctional physical and mental healthcare,*  
35 *substance abuse reduction, HIV/AIDS prevention, violence*  
36 *prevention, and reentry programs for inmates and wards.*

37 *(j) To ensure compliance with the federal Prison Rape*  
38 *Elimination Act of 2003, Public Law 108-79.*

1     *SEC. 3. Article 3 (commencing with Section 2635) is added to*  
2     *Chapter 3 of Title 1 of Part 3 of the Penal Code, to read:*

3

4

*Article 3. Sexual Abuse in Detention*

5

6     2635. (a) *The Department of Corrections and the*  
7     *Department of the Youth Authority shall perform background*  
8     *checks of all employees. No individual convicted of a sexual*  
9     *abuse related offense, nor any individual who has been fired or*  
10    *has resigned from a job as a corrections employee following an*  
11    *allegation of sexual abuse, shall be eligible for employment in a*  
12    *position that involves inmate or ward contact.*

13    (b) *The Department of Corrections and the Department of the*  
14    *Youth Authority shall provide training for current and future*  
15    *corrections staff members that shall include, but is not limited to,*  
16    *the following:*

17    (1) *A clear statement that sexual abuse of inmates and wards*  
18    *is a crime that will be reported to law enforcement authorities.*

19    (2) *Strategies for identifying and protecting potential victims.*

20    (3) *Information about how to appropriately respond when an*  
21    *inmate or ward discloses sexual abuse, including respecting the*  
22    *victim's confidentiality.*

23    (4) *Information about reporting and tracking incidents of*  
24    *sexual abuse.*

25    (c) *The requirements of this section apply to all employees,*  
26    *including contract employees, volunteers, healthcare*  
27    *professionals, and anyone who has contact with inmates and*  
28    *wards, on or off facility grounds.*

29    2636. *The Department of Corrections and the Department of*  
30    *the Youth Authority shall provide all inmates and wards with a*  
31    *handbook describing policies related to sexual conduct that shall*  
32    *contain, but is not limited to, the following elements:*

33    (a) *An assertion of each person's right to be free from sexual*  
34    *abuse and the institution's explicit prohibition of acts sexual*  
35    *abuse.*

36    (b) *A definition of abuse that uses clear, frank language, and*  
37    *includes the indicators of inappropriate staff relationships with*  
38    *inmates or wards.*

39    (c) *Information about the availability of confidential mental*  
40    *health counseling following sexual abuse.*

1 (d) A clear explanation of the steps the inmate or ward must  
2 take to file a grievance related to sexual abuse, an outline of the  
3 appeal process, and an explanation of how the inmate will know  
4 that internal remedies have been exhausted.

5 (e) An explanation that the normal chain of command can be  
6 breached for the reporting of sexual abuse, and a list of  
7 individuals in the institution to whom inmates and wards can  
8 make these reports.

9 (f) An assurance that the initial report will be confidential and  
10 that the inmate will have the option of whether or not to move  
11 forward with his or her initial complaint.

12 (g) An assurance that retaliation against victims of sexual  
13 assault for coming forward with grievances will not be tolerated.

14 (h) Information about how to request being housed in or out of  
15 segregation.

16 (i) A description of emergency medical procedures following  
17 sexual assault incidents, including the importance of timely  
18 reporting and refraining from showering after an assault.

19 (j) Information about how to contact the Office of the Sexual  
20 Abuse in Detention Ombudsperson.

21 2637. The following practices shall be instituted to prevent  
22 sexual violence and promote inmate and ward safety in the  
23 Department of Corrections and the Department of the Youth  
24 Authority:

25 (a) The Department of Corrections and the Department of the  
26 Youth Authority classification and housing assignment  
27 procedures shall take into account risk factors that can lead to  
28 inmates and wards becoming the target of sexual victimization or  
29 of being sexually aggressive toward others. Relevant  
30 considerations include:

31 (1) Age and size of the inmate or ward.

32 (2) Whether the offender is a violent or nonviolent offender.

33 (3) Whether inmate or ward has served a prior term of  
34 commitment.

35 (4) Whether the inmate or ward has a history of mental illness.

36 (5) The inmate or ward's race or ethnicity.

37 (b) The Department of Corrections and the Department of the  
38 Youth Authority shall ensure that staff members intervene when  
39 an inmate appears to be the target of sexual harassment or  
40 intimidation.

1     (c) *The Department of Corrections and the Department of the*  
2 *Youth Authority shall, whenever possible, assign at least one*  
3 *female officer per shift to any area of any facility in which female*  
4 *detainees are located.*

5     2638. *The Department of Corrections and the Department of*  
6 *the Youth Authority shall ensure that its protocols for responding*  
7 *to sexual abuse include all of the following:*

8     (a) *The safety of an inmate or ward who alleges that he or she*  
9 *has been the victim of sexual abuse shall be immediately and*  
10 *discreetly ensured. The housing option of the victim shall be*  
11 *followed to the greatest extent possible. Staff shall provide the*  
12 *safest possible housing options to inmates and wards who have*  
13 *experienced repeated abuse. Housing options shall include*  
14 *discreet institution transfers and reciprocal inmate exchange*  
15 *programs between different states.*

16     (b) *Inmates and wards who file complaints shall not be*  
17 *punished, either directly or indirectly. Administrative*  
18 *segregation of those who report abuse shall not be automatic,*  
19 *unless requested by the victim. If a person is segregated for his*  
20 *or her own protection, segregation must be nondisciplinary, and*  
21 *shall not result in any loss of privileges.*

22     (c) *Any person who knowingly or willfully submits inaccurate*  
23 *or untruthful information in regards to sexual abuse is*  
24 *punishable pursuant to department regulations.*

25     (d) *Under no circumstances is it appropriate to suggest that*  
26 *an inmate should fight to avoid sexual violence or to suggest that*  
27 *the reported sexual abuse is not significant enough to be*  
28 *addressed by staff.*

29     (e) *Staff shall not discriminate in their response to inmates*  
30 *and wards who are gay, bisexual, or transgender who experience*  
31 *sexual aggression, or report that they have experienced sexual*  
32 *abuse.*

33     (f) *Retaliation against an inmate or ward for making an*  
34 *allegation of sexual abuse shall be strictly prohibited.*

35     2639. *Thoughtful, confidential standards of physical and*  
36 *mental healthcare shall be implemented to reduce the impact of*  
37 *sexual abuse on inmates and wards in the Department of*  
38 *Corrections and the Department of the Youth Authority that*  
39 *include all of the following:*

1 (a) Clinics shall have a protocol in place to respond when  
2 sexual abuse is suspected, and all practitioners shall be trained  
3 accordingly.

4 (b) Victims shall receive appropriate acute-trauma care for  
5 rape victims, including treatment of injuries, HIV/AIDS  
6 prophylactic measures, emergency contraception, and, later,  
7 testing for sexually transmissible diseases.

8 (c) Health practitioners who conduct or encounter an inmate  
9 or ward suffering from problems that might indicate sexual  
10 abuse, such as trauma, sexually transmissible diseases,  
11 pregnancy, or chronic pain symptoms, shall ask whether the  
12 patient has experienced sexual abuse.

13 (d) Practitioners should strive to ask frank, straight-forward  
14 questions about sexual incidents without shaming inmates or  
15 displaying embarrassment about the subject matter.

16 (e) When a sexual assault victim is treated outside of a  
17 corrections institution, hospital staff and rape crisis center  
18 representatives shall be allowed to consult with the victim in  
19 private.

20 (f) Confidential mental health counseling intended to help the  
21 victim to cope with the aftermath of abuse shall be offered to  
22 those who report sexual abuse. Victims shall be monitored for  
23 suicidal impulses, posttraumatic stress disorder, depression, and  
24 other mental health consequences.

25 (g) Any adult inmate in counseling for any reason shall be  
26 entitled to speak confidentially about sexual abuse. Policies that  
27 require staff members to disclose infractions committed at the  
28 institution shall be amended to except sexual abuse. All inmates  
29 who receive counseling for any reason shall be informed of this  
30 confidentiality policy.

31 (h) Institutions shall whenever possible assist victims of sexual  
32 abuse in detention upon their release.

33 2640. The Department of Corrections and the Department of  
34 the Youth Authority shall ensure that the following procedures  
35 are performed in the investigation and prosecution of sexual  
36 abuse incidents:

37 (a) Adult inmate victims shall be entitled to choose whether to  
38 move forward with charges of abuse. The provision of safe  
39 housing options, medical care, and the like shall not be  
40 contingent upon the victim's willingness to press charges.

1 (b) Investigations into allegations of sexual abuse shall  
2 include the use of forensic rape kits, questioning of suspects and  
3 witnesses, and gathering of other relevant evidence.

4 (c) Physical and testimonial evidence shall be carefully  
5 preserved for use in any future proceedings.

6 (d) Staff attitudes that inmates and wards cannot provide  
7 reliable information shall be discouraged.

8 (e) If an investigation confirms that any employee has  
9 sexually abused an inmate or ward, that employee shall be  
10 terminated. Administrators shall report criminal sexual abuse by  
11 staff to law enforcement authorities.

12 (f) The desire to address sexual abuse in detention shall not  
13 result in criminal prosecutions against those engaging in  
14 consensual inmate-inmate sexual relationships.

15 2641. The Department of Corrections and the Department of  
16 the Youth Authority shall collect data as follows:

17 (a) The Department of Corrections and the Department of the  
18 Youth Authority shall keep statistics on the sexual abuse of  
19 inmates and wards. Sexual abuse incidence shall not be  
20 classified as “other” nor simply included in a broader category  
21 of general assaults.

22 (b) Statistics shall include whether the abuse was perpetuated  
23 by a staff member or other inmate, the results of the  
24 investigation, whether the victim chose to press charges, and any  
25 resolution of the complaint by department officials and  
26 prosecution authorities.

27 (c) This data shall be made available to the public.

28 2642. (a) The Office of the Sexual Abuse in Detention  
29 Elimination Ombudsperson is hereby created in state government  
30 to ensure the impartial resolution of inmate and ward sexual  
31 abuse complaints and to comprehensively monitor progress  
32 toward the eradication of this problem. The office shall be based  
33 within the State Department of Mental Health or other capable  
34 agency, not including the Department of Corrections or the  
35 Department of the Youth Authority. The duties of this office may  
36 be contracted to outside nongovernmental experts.

37 (b) The ombudsperson shall have the authority to inspect all of  
38 the Department of Corrections and the Department of the Youth  
39 Authority institutions and to interview all inmates and wards.



1 (c) *The Department of Corrections and the Department of the*  
2 *Youth Authority shall allow all inmates and wards to write*  
3 *confidential letters and place confidential, free-of-charge*  
4 *telephone calls to the ombudsperson.*

5 (d) *Information about how to confidentially contact the*  
6 *ombudsperson shall be provided in inmate handbooks and*  
7 *clearly posted on placards in all of the Department of*  
8 *Corrections and the Department of the Youth Authority*  
9 *institutions.*

10 (e) *The ombudsperson shall investigate reports of the*  
11 *mishandling of incidents of sexual abuse, while maintaining the*  
12 *confidentiality of the victims of sexual abuse, if requested by the*  
13 *victim.*

14 (f) *The ombudsperson shall submit a semiannual report to the*  
15 *Legislature and the California State Senate Select Committee on*  
16 *the California Correctional System, not later than January 1 and*  
17 *July 1 of each year, that shall include an assessment of the*  
18 *following:*

19 (1) *The Department of Corrections' and the Department of the*  
20 *Youth Authority's progress toward compliance with the federal*  
21 *Prison Rape Elimination Act of 2003.*

22 (2) *The Department of Corrections and the Department of the*  
23 *Youth Authority's compliance with the Sexual Abuse in Detention*  
24 *Elimination Act.*

25 (3) *A summary of reports of abuse submitted to the*  
26 *ombudsperson from inmates, wards, and outside organizations.*

27 2643. *The Department of Corrections and the Department of*  
28 *the Youth Authority shall:*

29 (a) *Develop guidelines for allowing outside organizations and*  
30 *service agencies to offer resources and provide confidential*  
31 *counseling to inmates and wards including, but not limited to, the*  
32 *following:*

33 (1) *Rape crisis agencies.*

34 (2) *Hospitals.*

35 (3) *Gay rights organizations.*

36 (4) *HIV/AIDS service providers.*

37 (5) *Civil rights organizations.*

38 (b) *Provide information to other governmental agencies and*  
39 *their staff who may encounter survivors of sexual abuse in*  
40 *detention, such as parole and probation officers, substance abuse*

1 *treatment providers, and prisoner reentry professionals, to*  
2 *increase their awareness of and sensitivity to the reality that*  
3 *some of their clients may have encountered sexual abuse in*  
4 *detention.*

5 ~~on the steps that will be taken to address and prosecute the~~  
6 ~~rape of any prison inmate, regardless of whether the rape is~~  
7 ~~perpetrated by another inmate, or by a prison guard.~~