

AMENDED IN ASSEMBLY MAY 2, 2005

AMENDED IN ASSEMBLY APRIL 13, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 550

Introduced by Assembly Member Goldberg
(Coauthors: Assembly Members Cohn and Spitzer)

February 16, 2005

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. 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.

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. This act shall be known and may be cited as the
2 Sexual Abuse in Detention Elimination Act.

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

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

9 (b) To make the prevention of sexual abuse in detention a top
10 priority in all state detention institutions.

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

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

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

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

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

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

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

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

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

1 Article 3. Sexual Abuse in Detention

2

3 2635. (a) The Department of Corrections and the Department
4 of the Youth Authority shall perform background checks of all
5 employees. No individual convicted of a sexual abuse related
6 offense, nor any individual who has been fired or has resigned
7 from a job as a corrections employee following an allegation of
8 sexual abuse, shall be eligible for employment in a position that
9 involves inmate or ward contact.

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

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

16 (2) Strategies for identifying and protecting potential victims.

17 (3) Information about how to appropriately respond when an
18 inmate or ward discloses sexual abuse, including respecting the
19 victim’s confidentiality.

20 (4) Information about reporting and tracking incidents of
21 sexual abuse.

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

26 2636. The Department of Corrections and the Department of
27 the Youth Authority shall provide all inmates and wards with a
28 handbook describing policies related to sexual conduct that shall
29 contain, but is not limited to, the following elements:

30 (a) An assertion of each person’s right to be free from sexual
31 abuse and the institution’s explicit prohibition of acts sexual
32 abuse.

33 (b) A definition of abuse that uses clear, frank language, and
34 includes the indicators of inappropriate staff relationships with
35 inmates or wards.

36 (c) Information about the availability of confidential mental
37 health counseling following sexual abuse.

38 (d) A clear explanation of the steps the inmate or ward must
39 take to file a grievance related to sexual abuse, an outline of the

1 appeal process, and an explanation of how the inmate will know
2 that internal remedies have been exhausted.

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

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

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

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

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

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

19 2637. The following practices shall be instituted to prevent
20 sexual violence and promote inmate and ward safety in the
21 Department of Corrections and the Department of the Youth
22 Authority:

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

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

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

31 (3) Whether inmate or ward has served a prior term of
32 commitment.

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

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

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

39 (c) The Department of Corrections and the Department of the
40 Youth Authority shall, whenever possible, assign at least one

1 female officer per shift to any area of any facility in which
2 female detainees are located.

3 2638. The Department of Corrections and the Department of
4 the Youth Authority shall ensure that its protocols for responding
5 to sexual abuse include all of the following:

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

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

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

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

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

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

33 2639. Thoughtful, confidential standards of physical and
34 mental healthcare shall be implemented to reduce the impact of
35 sexual abuse on inmates and wards in the Department of
36 Corrections and the Department of the Youth Authority that
37 include all of the following:

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

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

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

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

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

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

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

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

30 2640. The Department of Corrections and the Department of
31 the Youth Authority shall ensure that the following procedures
32 are performed in the investigation and prosecution of sexual
33 abuse incidents:

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

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

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

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

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

9 ~~(f) The desire to address sexual abuse in detention shall not
10 result in criminal prosecutions against those engaging in
11 consensual inmate-inmate sexual relationships.~~

12 *(f) Consensual sodomy and oral copulation among inmates is
13 prohibited by subdivision (e) of Section 286 and subdivision (e)
14 of Section 288a, respectively. Without repealing those provisions,
15 the increased scrutiny provided by this article shall apply only to
16 nonconsensual sexual contact among inmates and custodial
17 sexual misconduct.*

18 2641. The Department of Corrections and the Department of
19 the Youth Authority shall collect data as follows:

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

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

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

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

1 (b) The ombudsperson shall have the authority to inspect all of
2 the Department of Corrections and the Department of the Youth
3 Authority institutions and to interview all inmates and wards.

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

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

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

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

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

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

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

29 2643. The Department of Corrections and the Department of
30 the Youth Authority shall:

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

35 (1) Rape crisis agencies.

36 (2) Hospitals.

37 (3) Gay rights organizations.

38 (4) HIV/AIDS service providers.

39 (5) Civil rights organizations.

1 (b) Provide information to other governmental agencies and
2 their staff who may encounter survivors of sexual abuse in
3 detention, such as parole and probation officers, substance abuse
4 treatment providers, and prisoner reentry professionals, to
5 increase their awareness of and sensitivity to the reality that some
6 of their clients may have encountered sexual abuse in detention.

O