

AMENDED IN ASSEMBLY MAY 26, 2005

AMENDED IN ASSEMBLY MAY 9, 2005

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, Dymally, and Spitzer)
(Coauthor: Senator Kuehl)

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~~ *that the Department of Corrections and the Department of the Youth Authority* not hire any person who has been convicted of, or determined administratively to have committed, 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 health care 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~~ *ensure impartial resolution of inmate and ward sexual abuse complaints*.

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 health care,
33 substance abuse reduction, HIV/AIDS prevention, violence
34 prevention, and reentry programs for inmates and wards.

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

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

5

6

Article 3. Sexual Abuse in Detention

7

8 2635. (a) ~~The Department of Corrections and the Department~~
9 ~~of the Youth Authority shall perform background checks of all~~
10 ~~employees.~~ No individual convicted of a sexual abuse-related
11 offense, nor any individual who has been determined
12 administratively to have committed a sexual offense shall be
13 eligible for employment in a position that involves inmate or
14 ward contact.

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

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

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

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

25 (4) Information about reporting and tracking incidents of
26 sexual abuse.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (3) Whether inmate or ward has served a prior term of
36 commitment.

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

38 (5) The inmate or ward's race, ethnicity, or religion.

39 (b) The Department of Corrections and the Department of the
40 Youth Authority shall ensure that staff members intervene when

1 an inmate appears to be the target of sexual harassment or
2 intimidation.

3 (c) The Department of Corrections and the Department of the
4 Youth Authority shall, whenever possible, assign at least one
5 female officer per shift to any *housing unit or any* area of any
6 facility in which female detainees ~~are located~~ *may be observed*
7 *unclothed*.

8 2638. The Department of Corrections and the Department of
9 the Youth Authority shall ensure that its protocols for responding
10 to sexual abuse include all of the following:

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

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

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

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

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

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

37 2639. Thoughtful, confidential standards of physical and
38 mental health care shall be implemented to reduce the impact of
39 sexual abuse on inmates and wards in the Department of

1 Corrections and the Department of the Youth Authority that
2 include all of the following:

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

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

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

15 (d) Practitioners should strive to ask frank, straightforward
16 questions about sexual incidents without shaming inmates or
17 displaying embarrassment about the subject matter.

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

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

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

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

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

39 (a) Adult inmate victims shall be entitled to choose whether to
40 move forward with charges of abuse. The provision of safe

1 housing options, medical care, and the like shall not be
2 contingent upon the victim's willingness to press charges.

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

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

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

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

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

20 2641. The Department of Corrections and the Department of
21 the Youth Authority shall collect data as follows:

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

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

32 ~~(c) This data shall be made available to the public. The~~
33 *Department of Corrections and the Department of the Youth*
34 *Authority shall keep statistics on self-compliance with this act.*
35 *The data shall be made available to the Office of the Sexual*
36 *Abuse in Detention Elimination Ombudsperson.*

37 2642. (a) The Office of the Sexual Abuse in Detention
38 Elimination Ombudsperson is hereby created in state government
39 to ensure the impartial resolution of inmate and ward sexual
40 abuse complaints ~~and to comprehensively monitor progress~~

1 ~~toward the eradication of this problem.~~ The office shall be based
2 within the office of the Inspector General. The duties of this
3 office may be contracted to outside nongovernmental experts.

4 (b) The ombudsperson shall have the authority to inspect all of
5 the Department of Corrections and the Department of the Youth
6 Authority institutions and to interview all inmates and wards.

7 (c) The Department of Corrections and the Department of the
8 Youth Authority shall allow all inmates and wards to write
9 confidential letters ~~and place confidential, free-of-charge~~
10 ~~telephone calls~~ regarding sexual abuse to the ombudsperson.

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

15 (e) ~~The ombudsperson~~ *Office of the Inspector General* shall
16 investigate reports of the mishandling of incidents of sexual
17 abuse, while maintaining the confidentiality of the victims of
18 sexual abuse, if requested by the victim.

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

24 ~~(1) The Department of Corrections' and the Department of the~~
25 ~~Youth Authority's progress toward compliance with the federal~~
26 ~~Prison Rape Elimination Act of 2003.~~

27 ~~(2) The Department of Corrections and the Department of the~~
28 ~~Youth Authority's compliance with the Sexual Abuse in~~
29 ~~Detention Elimination Act.~~

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

32 2643. The Department of Corrections and the Department of
33 the Youth Authority shall:

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

38 (1) Rape crisis agencies.

39 (2) Hospitals.

40 (3) Gay rights organizations.

- 1 (4) HIV/AIDS service providers.
- 2 (5) Civil rights organizations.
- 3 (b) Provide information to other governmental agencies and
- 4 their staff who may encounter survivors of sexual abuse in
- 5 detention, such as parole and probation officers, substance abuse
- 6 treatment providers, and prisoner reentry professionals, to
- 7 increase their awareness of and sensitivity to the reality that some
- 8 of their clients may have encountered sexual abuse in detention.
- 9 2646. The provisions of this act are severable. If any
- 10 provision of this act or its application is held invalid, that
- 11 invalidity shall not affect other provisions or applications that can
- 12 be given effect without the invalid provision or application.

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CORRECTIONS:
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