

AMENDED IN SENATE AUGUST 15, 2005

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, Koretz, and
Spitzer)
~~(Coauthor: Senator Kuehl)~~ *Coauthors: Senators Kuehl and Speier)*

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 *than* \$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 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 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 *general* information *on the prevalence of prisoner rape* 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 *Elimination* Ombudsperson to monitor the prevention of and
29 response to sexual abuse that occurs in the Department of
30 Corrections and the Department of the Youth Authority
31 institutions.
- 32 (i) To increase the efficiency of state expenditure on
33 corrections, correctional physical and mental health care,
34 substance abuse reduction, HIV/AIDS prevention, violence
35 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) No individual convicted of a sexual abuse-related
9 offense, nor any individual who has been determined
10 administratively to have committed a sexual offense shall be
11 eligible for employment in a position that involves inmate or
12 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 is
18 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, health care
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 *of* 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 *Elimination* 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 *the* 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, ethnicity, or religion.~~

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 housing unit or any area of any
4 facility in which female detainees may be observed unclothed.

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 may include
14 discreet institution transfers.

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

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

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

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

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

34 2639. Thoughtful, confidential standards of physical and
35 mental health care shall be implemented to reduce the impact of
36 sexual abuse on inmates and wards in the Department of
37 Corrections and the Department of the Youth Authority that
38 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 or
9 ward suffering from problems that might indicate sexual abuse,
10 such as trauma, sexually transmissible diseases, pregnancy, or
11 chronic pain symptoms, shall ask whether the patient has
12 experienced sexual abuse.

13 (d) Practitioners should strive to ask frank, straightforward
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
32 sexual 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 include
2 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~~ *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) 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
15 provisions, the increased scrutiny provided by this article shall
16 apply only to nonconsensual sexual contact among inmates and
17 custodial 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~~ *incidents* shall not be
23 classified as “other” nor simply included in a broader category of
24 general assaults.

25 (b) Statistics shall include whether the abuse was ~~perpetuated~~
26 *perpetrated* 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) The Department of Corrections and the Department of the
31 Youth Authority shall keep statistics on self-compliance with this
32 act. The data shall be made available to the Office of the Sexual
33 Abuse in Detention Elimination Ombudsperson.

34 2642. (a) The Office of the Sexual Abuse in Detention
35 Elimination Ombudsperson is hereby created in state government
36 to ensure the impartial resolution of inmate and ward sexual
37 abuse complaints. The office shall be based within the ~~office~~
38 *Office* of the Inspector General. The duties of this office may be
39 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 regarding sexual abuse to the ombudsperson.

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

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

15 2643. The Department of Corrections and the Department of
16 the Youth Authority shall:

17 (a) Develop guidelines for allowing outside organizations and
18 service agencies to offer resources and provide confidential
19 counseling to inmates and wards, including, but not limited to,
20 the following:

21 (1) Rape crisis agencies.

22 (2) Hospitals.

23 (3) Gay rights organizations.

24 (4) HIV/AIDS service providers.

25 (5) Civil rights organizations.

26 (6) *Human rights organizations.*

27 (b) Provide ~~information~~ *general information on the prevalence*
28 *of prisoner rape* to other governmental agencies and their staff
29 who may encounter survivors of sexual abuse in detention, such
30 as parole and probation officers, substance abuse treatment
31 providers, and prisoner reentry professionals, to increase their
32 awareness of, and sensitivity to, the reality that some of their
33 clients may have encountered sexual abuse in detention.

34 2646. The provisions of this act are severable. If any
35 provision of this act or its application is held invalid, that
36 invalidity shall not affect other provisions or applications that can
37 be given effect without the invalid provision or application.