

Assembly Bill No. 550

CHAPTER 303

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.

[Approved by Governor September 22, 2005. Filed with Secretary of State September 22, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 550, 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, would make legislative findings and declarations to the effect that its purpose would be to protect all inmates and wards from sexual abuse while held in institutions operated by the Department of Corrections and Rehabilitation.

This bill would require the agency to provide inmates and wards with informational handbooks regarding sexual abuse in detention published by outside organizations, as specified.

This bill would require the Department of Corrections and Rehabilitation 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 Rehabilitation to develop guidelines for allowing outside organizations and service agencies to provide resources and counseling to inmates and wards.

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

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

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

(a) To protect all inmates and wards from sexual abuse while held in institutions operated by the Department of Corrections and Rehabilitation.

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

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

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

(e) To increase the accountability of the Department of Corrections and Rehabilitation to prevent, reduce, and respond to sexual abuse in detention.

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

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

(h) To establish an Office of the Sexual Abuse in Detention Elimination Ombudsperson to monitor the prevention of and response to sexual abuse that occurs in the Department of Corrections and Rehabilitation institutions.

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

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

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

Article 3. Sexual Abuse in Detention

2635.

2635. The Department of Corrections and Rehabilitation shall review informational handbooks regarding sexual abuse in detention published by outside organizations. Upon approving the content thereof, handbooks provided by one or more outside organizations shall be made available to inmates and wards.

2636. For the purposes of this section, all references to classification of wards shall take effect upon the adoption of a classification system for wards developed by the Department of Corrections and Rehabilitation in compliance with Farrell v. Allen, Alameda County Superior Court Case No. RG 03079344.

The following practices shall be instituted to prevent sexual violence and promote inmate and ward safety in the Department of Corrections and Rehabilitation:

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

- (1) Age of the inmate or ward.
- (2) Whether the offender is a violent or nonviolent offender.
- (3) Whether the inmate or ward has served a prior term of commitment.
- (4) Whether the inmate or ward has a history of mental illness.

(b) The Department of Corrections and Rehabilitation shall ensure that staff members intervene when an inmate or ward appears to be the target of sexual harassment or intimidation.

2637. The Department of Corrections and Rehabilitation shall ensure that its protocols for responding to sexual abuse include all of the following:

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

(b) Inmates and wards who file complaints of sexual abuse shall not be punished, either directly or indirectly, for doing so. If a person is segregated for his or her own protection, segregation must be nondisciplinary.

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

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

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

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

2638. Thoughtful, confidential standards of physical and mental health care shall be implemented to reduce the impact of sexual abuse on inmates and wards in the Department of Corrections and Rehabilitation that include all of the following:

(a) Victims shall receive appropriate acute-trauma care for rape victims, including, but not limited to, treatment of injuries, HIV/AIDS prophylactic measures, and, later, testing for sexually transmittable diseases.

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

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

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

(e) Any adult inmate in mental health counseling for any reason shall be entitled to speak confidentially about sexual abuse.

2639. The Department of Corrections and Rehabilitation shall ensure that the following procedures are performed in the investigation and prosecution of sexual abuse incidents:

(a) The provision of safe housing options, medical care, and the like shall not be contingent upon the victim's willingness to press charges.

(b) Investigations into allegations of sexual abuse shall include, when deemed appropriate by the investigating agency, the use of forensic rape kits, questioning of suspects and witnesses, and gathering of other relevant evidence.

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

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

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

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

2640. The Department of Corrections and Rehabilitation shall collect data as follows:

(a) The Department of Corrections and Rehabilitation shall keep statistics on the sexual abuse of inmates and wards. Sexual abuse incidents shall not be classified as "other" nor simply included in a broader category of general assaults.

(b) Statistics shall include whether the abuse was perpetrated by a staff member or other inmate, the results of the investigation and any resolution of the complaint by department officials and prosecution authorities.

The data shall be made available to the Office of the Sexual Abuse in Detention Elimination Ombudsperson.

2641. (a) The Office of the Sexual Abuse in Detention Elimination Ombudsperson is hereby created in state government to ensure the impartial resolution of inmate and ward sexual abuse complaints. The office shall be based within the Office of the Inspector General. The duties of this office may be contracted to outside nongovernmental experts.

(b) The ombudsperson shall have the authority to inspect all of the Department of Corrections and Rehabilitation institutions and to interview all inmates and wards.

(c) The Department of Corrections and Rehabilitation shall allow all inmates and wards to write confidential letters regarding sexual abuse to the ombudsperson.

(d) Information about how to confidentially contact the ombudsperson shall be clearly posted in all of the Department of Corrections and Rehabilitation institutions.

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

2642. The Department of Corrections and Rehabilitation shall:

Develop guidelines for allowing outside organizations and service agencies to offer resources to inmates and wards, including, but not limited to, the following:

- (1) Rape crisis agencies.
- (2) Hospitals.
- (3) Gay rights organizations.
- (4) HIV/AIDS service providers.
- (5) Civil rights organizations.
- (6) Human rights organizations.

2643. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.