

Date of Hearing: March 11, 2025

Chief Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

AB 464 (Aguiar-Curry) – As Introduced February 6, 2025

REVISED

As Proposed to be Amended in Committee

SUMMARY: Requires the California Department of Corrections and Rehabilitation (CDCR) to monitor an incarcerated person who is reported to have suffered sexual assault for 90 days following the report of sexual assault, and require CDCR to report that allegation to the Office of Internal Affairs. Specifically, **this bill:**

- 1) Requires CDCR, for 90 days following the date of a report of an allegation of sexual assault brought on behalf of an incarcerated person against a staff member, to monitor the incarcerated person who is reported to have suffered the sexual assault and, if they are different, the person who made the report for possible retaliation.
- 2) Requires CDCR to report an allegation of sexual assault to the CDCR's Office of Internal Affairs.
- 3) Requires CDCR, at the request of an incarcerated person who is reported to have suffered a sexual assault, to notify an immediate family member of the incarcerated person regarding the report of sexual assault within 24 hours of the request.
- 4) Requires CDCR, unless requested by the incarcerated person not to do so, to notify an immediate family member of an incarcerated person who is reported to have suffered a sexual assault within 48 hours regarding any update or progress on the investigation into the allegations of sexual assault.
- 5) Requires CDCR, at the request of an incarcerated person who is reported to have suffered a sexual assault, to notify within 48 hours of the request a rape crisis center, community-based organization, or an attorney, or any combination thereof, of the incarcerated person's choosing, regarding the report of sexual assault.
- 6) Prohibits an incarcerated person who is reported to have suffered a sexual assault by a staff member at a CDCR facility from being transferred to another facility without their written consent, unless their safety would be at risk.
- 7) Provides that a CDCR employee confirmed to have sexually abused an incarcerated person is prohibited from future employment with CDCR.
- 8) Defines "department" as the Department of Corrections and Rehabilitation.

- 9) Defines “immediate family member” as a spouse, domestic partner, parent, guardian, grandparent, aunt, uncle, brother, sister, children or grandchildren who are related by blood, marriage, or adoption.
- 10) Defines “incarcerated person” as any individual who is in the custody of the department.
- 11) Defines “staff member” as any employee or agent of the department, including, but not limited to, a correctional peace officer, as specified.
- 12) Defines “sexual assault” as specified sex crimes, including sexual battery, rape, sodomy, and oral copulation, assault with the intent to commit any of those crimes, or an attempt to commit any of those crimes.
- 13) Provides that an action for sexual assault brought against a public entity or public employee by a person who is imprisoned on a criminal charge, or in execution under the sentence of a criminal court, shall be tolled during the period of imprisonment and until four years after the release from actual custody.
- 14) Contains a severability clause.

EXISTING LAW:

- 1) Requires CDCR to ensure that the following procedures are performed in an 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 incarcerated persons and wards cannot provide reliable information shall be discouraged.
 - e) If an investigation confirms that an employee has sexually abused an incarcerated person or ward, that employee shall be terminated. Administrators shall report criminal sexual abuse by staff to law enforcement authorities.
 - f) The above provision only apply to nonconsensual sexual contact among incarcerated persons and custodial sexual misconduct. (Pen. Code, § 2639, subs. (a)-(f).)
- 2) Charges the Office of the Inspector General with contemporaneous public oversight of the CDCR investigations and staff grievance inquiries conducted by the CDCR’s Office of Internal Affairs. (Pen. Code, § 6133, subd. (a)(1).)

- 3) Requires the OIG, to facilitate oversight of CDCR's internal affairs investigations, to have staff physically co-located with the CDCR's Office of Internal Affairs, within a reasonable timeframe and without undue delays. (Pen. Code, § 6133, subd. (a)(2).)
- 4) Requires the OIG to be responsible for advising the public regarding the adequacy of each investigation and whether discipline of the subject of the investigation is warranted. (Pen. Code, § 6133, subd. (a)(3).)
- 5) Requires the OIG to have discretion to provide public oversight of other CDCR personnel investigations, as needed. (Pen. Code, § 6133, subd. (a)(4).)
- 6) Requires the OIG to have investigatory authority over all staff misconduct cases that involve sexual misconduct with an incarcerated person. (Pen. Code, § 6133, subd. (a)(5).)
- 7) Authorizes OIG to monitor and investigate a complaint that involves sexual misconduct with an incarcerated person. (Pen. Code, § 6133, subd. (a)(6).)
- 8) Authorizes OIG to exercise its investigatory authority in both of the following situations:
 - a) Into a complaint that involves sexual misconduct that CDCR has not opened for investigation.
 - b) During an investigation being performed CDCR, if the OIG determines that CDCR is not performing an adequate investigation, the OIG may perform the supplemental investigative measures it deems necessary to ensure the investigation is performed adequately. (Pen. Code, § 6133, subd. (a)(7)(A)(i)-(ii).)
- 9) Prohibits the OIG from exercising its investigative authority in a manner that duplicates investigative efforts or interferes with an ongoing investigation being performed by CDCR. (Pen. Code, § 6133, subd. (a)(7)(B).)
- 10) Requires OIG, upon completion of an investigation, to compile an investigation report and provide a copy of the report, together with all underlying evidence gathered during the investigation, to the appropriate hiring authority within CDCR. (Pen. Code, § 6133, subd. (a)(8)(A).)
- 11) Requires OIG to monitor the actions the hiring authority takes after receiving the investigation report and report the results of its monitoring, as specified. (Pen. Code, § 6133, subd. (a)(8)(B).)
- 12) Requires OIG to issue regular reports, no less than annually, to the Governor and the Legislature summarizing its recommendations concerning its oversight of CDCR allegations of internal misconduct and use of force.
- 13) Requires OIG to issue regular reports, no less than semiannually, summarizing its oversight of Office of Internal Affairs investigations, as specified. (Pen. Code, § 6133, subd. (b)(1)(A)-(E).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “California's Department of Corrections and Rehabilitation (CDCR) has a zero tolerance policy on sexual assault and harassment within state prisons. Yet despite the enactment of the Prison Rape Elimination Act over 20 years ago, sexual assault has not been eliminated in CDCR facilities. AB 464 aims to increase accountability for sexual abuse within California’s prison system by ensuring that survivors have the ability to seek justice and that abusive correctional staff cannot continue working within the system. The bill extends the statute of limitations, allowing survivors up to four years after their release to file claims, recognizing that many individuals need time to process their trauma before pursuing legal action. It also strengthens monitoring and oversight to prevent retaliation against those who report abuse. Given the widespread and ongoing nature of sexual abuse in California prisons, this bill is essential for breaking the cycle of abuse, ensuring justice for survivors, and fostering a safer prison environment.”
- 2) **OIG’s Monitoring of CDCR:** The OIG is an independent office that provides oversight of CDCR’s internal affairs investigations and the disciplinary process as well as oversight of grievances that fall within CDCR’s process for reviewing and investigating allegations of staff misconduct. Current law requires the OIG to determine the adequacy of each investigation and whether discipline of the subject of the investigation is warranted. The OIG is statutorily required to issue regular reports, no less than annually, to the Governor and the Legislature summarizing its recommendations concerning its oversight of CDCR allegations of internal misconduct and use of force, and regular reports, no less than semiannually, summarizing its oversight of OIA investigations. All reports are required to be posted on the IG’s website and otherwise made publicly available.

California’s prisons—and the women’s prisons in particular—have been plagued with allegations of staff sexual assault and sexual misconduct for years.¹ Last year, 130 individuals formerly incarcerated at the California Institution for Women (CIW) and Central California Women’s Facility (CCWF) filed a lawsuit against CDCR and 30 current and former correctional officers alleging that they were sexually abused while in prison. The lawsuit alleges the sexual abuse occurred throughout the prisons, including in cells, closets, and storage rooms, and alleges a variety of sexual abuse, including groping, forced oral copulation, and rape. In 2023, a former correctional officer at CCWF was arrested for sexually assaulting 13 incarcerated individuals over nine years and was charged with 96 counts of rape, sodomy, sexual battery, and rape under color of authority.²

- 3) **Prison Rape Elimination Act (PREA):** PREA was passed by Congress in 2003. It applies to all correctional facilities, including prisons, jails, and juvenile facilities. Among the many stated purposes for PREA are to establish a zero-tolerance standard for the incidence of

¹ See Richard Winton, “‘Every woman’s worst nightmare’: Lawsuit alleges widespread sexual abuse at California prisons for women,” located at (Jan. 18, 2024) available at <<https://www.latimes.com/california/story/2024-01-18/every-womans-worst-nightmare-lawsuit-alleges-widespread-sexual-abuse-at-californias-womens-prisons>>.

² Jeremy Childs, “Ex-corrections officer accused of raping 13 inmates in California women’s prison” (May 25, 2023) available at <<https://www.latimes.com/california/story/2023-05-25/ex-corrections-officer-accused-of-raping-inmates-at-california-womens-prison>>

prison rape in prisons in the United States; to develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape; to increase the available data and information on the incidence of prison rape to improve the management and administration of correctional facilities; and to increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape.³ PREA also created the National Prison Rape Elimination Commission and charged it with developing standards for the elimination of prison rape.

The PREA standards developed by the National Prison Rape Elimination Commission were issued as a final rule by the U.S. Department of Justice in 2012.⁴ Among other things, the standards require each agency and facility to designate a PREA point person to coordinate compliance efforts; develop and document a staffing plan, taking into account a set of specified factors, that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse; and train staff on key topics related to preventing, detecting, and responding to sexual abuse. In addition, the standards provide requirements regarding the avenues for reporting sexual abuse, investigation of sexual abuse, and access to medical and mental health care for inmate victims of sexual abuse.

This bill would codify an existing PREA standard that requires monitoring for retaliation of the person who reported sexual assault and the incarcerated person alleged to have suffered sexual assault for at least 90 days follow a report of sexual abuse.⁵ The standards also provide, “Items the agency should monitor include any inmate disciplinary reports, housing, or program changes, or negative performance review or reassignments of staff.”⁶ It also provides for continued monitoring beyond 90 days, if necessary.⁷

- 4) **CDCR PREA Policy:** AB 550 (Goldberg, Chapter 303, Statutes of 2005) established the Sexual Abuse in Detention Elimination Act. The Act requires CDCR 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. CDCR’s PREA policy provides guidelines for the prevention, detection, response, investigation, and tracking of sexual violence, staff sexual misconduct, and sexual harassment against CDCR inmates.⁸ The policy applies to all offenders and persons employed by CDCR, including volunteers and independent contractors assigned to an institution, community correctional facility, conservation camp, or parole.
- 5) **Argument in Support:** According to *Smart Justice*, “Despite efforts taken at the state and federal levels, staff sexual misconduct remains a persistent problem within CDCR facilities. Numerous reports and studies have shown high rates of sexual abuse by correctional staff. In September 2024, the Department of Justice launched an investigation at the two prisons in California that hold female inmates to determine whether CDCR has complied with its constitutional obligations to protect the people in their custody from sexual misconduct by staff.

³ 34 U.S.C. § 30301 et seq. (previously classified as 42 U.S.C. § 15601 et seq.)

⁴ 77 F.R.D. 37106.

⁵ PREA Standards, § 115.67, Prisons and Jails, subdivision (c).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ DOM §§ 5404.1-5404.22.

“AB 464 will increase monitoring for retaliation for 90 days following a report of staff sexual misconduct, extend the civil statute of limitations for survivors to four years following their release, ensure that any staff who is confirmed to have committed sexual abuse of an incarcerated person cannot be re-employed by CDCR after their termination, and ensure that survivors have adequate access to community support and oversight against retaliation following a report of sexual abuse.”

- 6) **Related Legislation:** AB 701 (Ortega) would require DOJ, in collaboration with CDCR and BSCC, to conduct a study on the use of solitary confinement within all detention facilities in California. AB 701 is pending hearing in this committee.
- 7) **Prior Legislation:**
 - a) SB 1069 (Menjivar), Chapter 1012, Statutes of 2024, granted the Office of Inspector General (OIG) investigatory authority over all staff misconduct cases that involve sexual misconduct with an incarcerated person, and authorized the OIG to monitor and investigate a complaint that involves sexual misconduct with an incarcerated person.
 - b) AB 102 (Ting), Chapter 38, Statutes of 2023, established “a sexual assault response and prevention working group and ambassador program” and allocated funds to CDCR as well as the Sister Warriors Freedom Coalition to support the working group in identifying best practices for whistleblower protections and trauma-informed care and support to survivors.
 - c) AB 1039 (Rodriguez) of the 2023-2024 Legislative Session, would have expanded the definition of the type sexual touching that, when done by an employee or agent of a public entity detention or health facility with a consenting adult who is confined in the facility, qualifies as criminal sexual activity, and increased the penalty for this type of criminal sexual touching from a misdemeanor to an alternative felony-misdemeanor. AB 1039 was held in suspense in the Assembly Appropriations Committee.
 - d) AB 1455 (Wicks), Chapter 595, Statutes of 2021, revives otherwise time-barred claims arising out of an alleged sexual assault by a law enforcement officer, modifies the statute of limitations claims arising out of an alleged sexual assault by law enforcement officer, and exempts such claims from all state and local government claim presentation requirements.
 - e) SB 990 (Wiener), of the 2017-2018 Legislative Session, would have required CDCR to consider sexual orientation and gender identity when classifying inmates in order to prevent sexual violence. SB 990 was held in suspense in the Assembly Appropriations Committee.
 - f) AB 550 (Goldberg), Chapter 303, Statutes of 2005, established the Sexual Abuse in Detention Elimination Act, which requires CDCR 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

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
All of Us or None (HQ)
Alliance for Boys and Men of Color
California Coalition for Women Prisoners
California Public Defenders Association (CPDA)
Californians for Safety and Justice (CSJ)
Californians United for A Responsible Budget
Courage California
Ella Baker Center for Human Rights
Grip Training Institute
Initiate Justice
Initiate Justice Action
Justice First
LA Defensa
Legal Services for Prisoners With Children
Ryse Center
San Francisco Public Defender
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy
Survived & Punished
The Place4grace
Transformative Programming Works
Uncommon Law
Valor US
Youth Empowerments Finest

Opposition

None Submitted.

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