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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 2550                      **Hearing Date:** May 15, 2018  
**Author:** Weber  
**Version:** May 8, 2018  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Prisons: Female Inmates and Male Correctional Officers*

## HISTORY

**Source:** Anti-Recidivism Coalition  
#Cut50

**Prior Legislation:** AB 303 (Gonzalez), Ch. 464, Stats. of 2015  
SB 716 (Lara), held in Assembly Appropriations 2013  
AB 550 (Goldberg), Ch. 303, Stats. of 2005

**Support:** ACLU of California; American College of Obstetricians and Gynecologists;  
California Catholic Conference; California Legislative Black Caucus; California  
Public Defenders Association; Ella Baker Center for Human Rights; National  
Association for Social Workers, California Chapter; Prison Law Office

**Opposition:** None known

**Assembly Floor Vote:** 70 - 0

## PURPOSE

*The purpose of this bill is to: 1) prohibit male correctional officers from conducting cross-gender pat-down searches, except as specified; 2) prohibit male correctional officers from entering an area of a prison where female inmates may be undressed, or from being in an area where they can view undressed female inmates; and 3) require documentation of each incident of a male correctional officer conducting a cross-gender pat-down search or entering a prohibited area.*

*Existing federal law, the Prison Rape Elimination Act (PREA), establishes a zero-tolerance standard for the incidence of prison rape in prisons in the United States, provides for the development and implementation of national standards for the detection, prevention, reduction, and punishment of prison rape, and mandates the review and analysis of the incidence and effects of prison rape. (34 U.S.C. § 30301 et seq.)*

*Existing law, the Sexual Abuse in Detention Elimination Act (SADEA), 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. (Pen. Code, § 2635 et seq.)*

*Existing law* requires CDCR to ensure that its protocols for responding to sexual abuse include all of the following:

- 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.
- 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.
- Any person who knowingly or willfully submits inaccurate or untruthful information in regards to sexual abuse is punishable pursuant to department regulations.
- 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.
- 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.
- Retaliation against an inmate or ward for making an allegation of sexual abuse shall be strictly prohibited. (Pen. Code, § 2637.)

*Existing law* requires certain procedures to be performed in the investigation and prosecution of sexual abuse incidents. (Pen. Code, § 2639.)

*Existing law* requires an employee to be terminated if an investigation confirms that the employee has sexually abused an inmate, and requires prison administrators to report criminal sexual abuse by staff to law enforcement authorities. (Pen. Code, § 2639, subd. (e).)

*Existing law* establishes the Office of the Sexual Abuse in Detention Elimination Ombudsman within the Office of the Inspector General to ensure the impartial resolution of inmate and ward sexual abuse complaints. (Pen. Code, § 2641.)

*Existing law* provides that inmates incarcerated in the state prison are under the protection of the law, and any injury to the inmate's person, not authorized by law, is punishable in the same manner as if the inmate were not convicted or sentenced. (Pen. Code, § 2650.)

*This bill* prohibits male correctional officers from conducting a pat-down search of a female inmate unless the inmate presents a risk of immediate harm to herself or others or risk of escape and there is not a female correctional officer available to conduct the search.

*The bill* prohibits a male correctional officer from entering an area of the institution where female inmates may be in a state of undress, or from being in an area where they can view female inmates in a state of undress, unless an inmate in the area presents a risk of immediate harm to herself or others or if there is a medical emergency in the area and there is not a female correctional officer who can resolve the situation in a safe and timely manner without his assistance.

*This bill* requires staff of the opposite sex to announce their presence when entering a housing unit.

*The bill* requires documentation of a male correctional officer conducting a pat-down search or entering a prohibited area within 3 days of the incident and requires the documentation to be reviewed by the warden and retained for reporting purposes.

*This bill* provides that CDCR may promulgate regulations to implement the provisions of the bill.

## COMMENTS

### 1. Need for This Bill

According to the author:

This bill will prohibit male correctional officers from pat down searching women who are incarcerated or entering into an area where incarcerated women are in a state of undress such as shower rooms and bathrooms. This bill also seeks to hold correctional officers accountable and ensure that documentation is submitted when women are pat searched or seen in a state of undress by a male guard.

Women are the fastest growing population behind bars. In the past two decades, the population of women in prison skyrocketed 700%. Women who are incarcerated often have very high rates of past traumatic experiences, with 86% of women in jails and prisons having reported being survivors of past sexual violence and 77% having reported being survivors of partner violence yet in many states male guards can strip search women and supervise them in showers and bathrooms. This bill aims to restore dignity to incarcerated women and reduce any further trauma by holding correctional officers accountable.

The bill is aligned with Prison Rape Elimination Act (PREA)...enacted...with the goal of preventing rape, sexual abuse, and harassment in federal, state, and local prisons.

### 2. PREA

#### a) Federal Law

PREA was enacted 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 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 of 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. (34 U.S.C. § 30301 et seq. [previously classified as 42 U.S.C. § 15601 et seq.]) The act also created the National Prison Rape Elimination Commission and charged it with developing standards for the elimination of prison rape.

**b) PREA Standards**

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. (77 Fed.Reg. 37106 [28 C.F.R. § 115 et seq.] (Jun. 20, 2012).) 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.

Pursuant to the PREA standards, prison staff are prohibited from conducting cross-gender strip searches and cross-gender visual body cavity searches except in exigent circumstances or when performed by medical practitioners. (28 C.F.R. § 115.15 (a) (2012).) Prison staff are also prohibited from conducting cross-gender pat-down searches of female inmates, absent exigent circumstances in facilities with more than 50 inmates. (28 C.F.R. § 115.15 (b) (2012).) Prison staff are required to document all cross-gender strip searches and cross-gender visual body cavity searches, and to document all cross-gender pat-down searches of female inmates. (28 C.F.R. § 115.15 (c) (2012).) Each facility is required to implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. (28 C.F.R. § 115.15 (d) (2012).) The standards specify that the policies and procedures must require staff of the opposite gender to announce their presence when entering an inmate housing unit. (*Id.*) Finally, the standards requires that security staff be trained in how to conduct cross-gender pat-down searches in a professional and respectful manner, and in the least intrusive manner, consistent with security needs. (28 C.F.R. § 115.15 (f) (2012).)

The PREA standards became immediately binding upon federal correctional facilities once they were finalized. To incentivize states to comply with the PREA standards, the federal government is authorized to reduce the funds a state would receive for prison purposes via a grant program established by PREA by 5 percent, unless the governor of the state submits proof of compliance to the U.S. Attorney General. Proof of compliance means either a certification that the state has adopted and is in full compliance with the PREA standards, or an assurance that the state intends to adopt and achieve full compliance with the PREA standards in the future. (34 U.S.C. § 30307 (e)(2) [previously classified as 42 U.S.C. § 15607(c)(2)].)

**3. SADEA**

AB 550 (Goldberg), Chapter 303, Statutes of 2005, established SADEA. The Act made several legislative findings and declarations regarding sexual abuse at CDCR institutions and required 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.

#### 4. CDCR Policies on Inmate Body Searches

##### a) Searches Generally

CDCR regulations provide that an inmate is subject to an inspection of his or her person, either clothed or unclothed, when there is a reasonable suspicion to believe the inmate may have unauthorized or dangerous items concealed on his or her person, or that he or she may have been involved in an altercation of any kind. (Cal. Code Regs., tit. 15, § 3287, subd. (b).) Random or spot-check inspections of inmates may also be authorized by the institution head to prevent possession and movement of unauthorized or dangerous items and substances into, out of, or within the institution. (*Id.*) CDCR's regulations specify that all such inspections must be conducted in a professional manner which avoids embarrassment or indignity to the inmate. (*Id.*) Whenever possible, unclothed body inspections of inmates must be conducted outside the view of others. (*Id.*)

##### b) Cross Gender Searches

Correctional employees, other than qualified medical staff, are prohibited from conducting unclothed body inspections of inmates of the opposite sex except under emergency conditions with life or death consequences. (Cal. Code Regs., tit. 15, § 3287, subd. (b)(1).) While routine inspections of clothed male inmates may be performed by employees of either sex, body inspection of clothed female inmates shall be conducted by female correctional employees only, except in emergency situations requiring the immediate search of inmates to avoid the threat of death, escape, or great bodily injury. (Cal. Code Regs., tit. 15, § 3287, subd. (b)(2) & (3).) In such emergency situations, male correctional employees may conduct clothed body inspections only until sufficient numbers of female correctional employees are available to assume critical body search duties. (Cal. Code Regs., tit. 15, § 3287, subd. (b)(3).) CDCR regulations prohibit male correctional employees from performing non-emergency body searches of female inmates under any circumstance. (Cal. Code Regs., tit. 15, § 3287, subd. (b)(4).) Further, any inspection of body cavities, other than visual or metal detector inspections, must be conducted in a medical setting under the direct supervision of a physician, and any physical intrusion into body cavities must be performed by a physician, and only after all less obtrusive methods have failed to bring the inspection to a conclusion. (Cal. Code Regs., tit. 15, § 3287, subd. (b)(5).)

CDCR's Department Operations Manual (DOM) provides further detail on its body search policies. CDCR's policy on clothed body searches of female inmates provides:

Body search procedures for clothed female inmates recognize, address, and minimize the effects of cross-gender contact inherent in the body search process by limiting this function to female correctional staff unless an emergency exists that threatens death, inmate escape, or great bodily injury to staff, inmates, or visitors.

Clothed Body Searches of female inmates shall be conducted by female correctional staff only, except in emergency situations as follows:

- When circumstances exist that require an immediate search of a female inmate in order to avoid the threat of death, escape, or great bodily injury to staff, inmates, or visitors, and only until sufficient numbers of female correctional staff are available to assume critical body search duties.
- Clothed Body Searches performed by male correctional staff during the emergency circumstances described above shall sweep the inmate's breast and genital area with the back of the hand for the purpose of discovering contraband directly related to the threat posed by the emergency. If cause exists for a more thorough search, the female inmate shall be detained until a female correctional staff member is available to conduct the search.
- At any time a male correctional staff member conducts a pat-down search of a female inmate, the search shall be documented. This documentation shall be completed utilizing a Notice of Unusual Occurrence which shall be reviewed by the supervisor and routed to the institutional PREA Compliance Manager (PCM). The PCM shall retain the completed document, in accordance with the Records Retention Schedule, for audit purposes.

Under no circumstances shall male correctional staff perform non-emergency clothed body searches of female inmates. (DOM § 52050.16.4.)

The relevant portions of CDCR's policy on unclothed body searches of inmates provide:

Unclothed body searches:

- Correctional personnel, other than qualified medical staff, shall not conduct unclothed body inspections or searches of an inmate of the opposite sex, except in an emergency.
- Routine unclothed body searches shall be conducted in a safe manner and in an area that allows the inmate to preserve some measure of dignity and self-respect. Routine unclothed body searches shall not be completed by staff of the opposite biological sex.
- Unclothed body searches of inmates by staff of the opposite biological sex shall only be conducted in emergency situations. If a cross gender unclothed body search is required, the search shall be documented. This documentation shall be completed utilizing a Notice of Unusual Occurrence which shall be reviewed by the supervisor and routed to the institutional PCM. The PCM shall retain the completed document, in accordance with the Records Retention Schedule, for audit purposes. (DOM § 52050.16.5.)

**c) CDCR's PREA Policy**

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. (DOM §§ 54040.1-54040.22.) 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. The policy provides:

Each institution shall enable offenders to shower, perform bodily functions, and change clothing without non-medical staff of the opposite biological sex viewing their breast, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Except in circumstances where there would be an impact to safety and security, modesty screens shall be placed strategically in areas that prevent incidental viewing.

In order to minimize cross gender exposure, staff of the opposite biological sex shall announce their presence when entering the housing unit. This announcement is required at the beginning of each shift and/or when the status quo within the housing unit changes. (DOM § 54040.4.)

The policy further provides:

Institutions shall document all cross-gender strip searches and cross-gender visual body cavity searches in accordance with DOM Section 52050.16.5, and shall document all cross-gender pat-down searches of female inmates in accordance with DOM Section 52050.16.4 utilizing the Notice of Unusual Occurrence (NOU). Completed NOU forms shall be reviewed by the supervisor and routed to the institutional PCM to retain for audit purposes. If the search is incidental to an emergency or crime that constitutes a CDCR Form 837, Crime Incident Report, the search shall also be documented within the incident report. (DOM § 54040.5.)

**5. PREA Audits**

CDCR's adult and juvenile facilities are subject to audits to ensure PREA compliance. PREA audits are completed in 3-year cycles. One-third of the state's prisons are audited each year of the 3-year cycle, with all of the state's prisons being audited during each 3-year cycle. The audits are completed by individuals who are certified with the U.S. DOJ to be PREA auditors. These individuals typically work within a state's corrections system. PREA auditors perform PREA audits of prisons outside of the state where the auditor is based. For example, a California corrections official who is a certified PREA auditor would complete PREA audits of prisons in another state, not of prisons within California.

The first PREA audit cycle began in August 2013 and ended in August 2016. No PREA audit was completed for the California Women's Institute (CIW) or the California Correctional Facility for Women (CCWF) during that audit cycle. Audits for both prisons are scheduled during 2018 or 2019 as part of the current audit cycle.

An audit of Folsom State Prison which contains the 400-bed Folsom Women's Facility was completed in 2016. The audit report did not include separate entries for the men's and women's facilities. It found that the prison was in overall compliance with the PREA standards. With respect to PREA Standard 115.15—limits to cross-gender viewing and searches—the report concluded:

CDCR Department Organization Manual...Policy 52050.16.4 reads body search procedures for clothed female inmates recognize, address, and minimize the effects of cross-gender contact inherent in the body search process by limiting this function to female correctional staff unless an emergency exists that threatens death, inmate escape, or great bodily injury to staff, inmates, or visitors. Policy section 54040.5 requires the documentation of all ... cross-gender pat-down searches of female inmates in accordance with DOM Section 52050.16.4 utilizing the Notice of Unusual Occurrence (NOU) form. Completed NOU forms are reviewed by supervisors and routed to the institutional PREA Compliance Manager for retention and audit purposes.

There were no instances of cross-gender strip searches, body cavity searches or pat-down searches within the past 12 months requiring the use of an NOU. This information was verified through random and specialized interviews with both staff and offenders. Policy section 54040.4 requires each institution to enable offenders to shower, perform bodily functions and change clothing without non-medical staff of the opposite biological sex viewing their breast, buttocks or genitalia except in exigent circumstances or when such viewing is incidental to routine cell checks. Except in circumstances where there would be an impact to safety and security, modesty screens shall be placed strategically in areas that prevent incidental viewing. The audit team observed every shower and toilet area for the possibility of cross gender viewing. The facility has done an excellent job either installing permanent modesty screens, such as shower areas within the housing units, or portable modesty screens for use in areas when offenders are strip-searched. (<https://www.cdcr.ca.gov/PREA/docs/FSP-2016-PREA-Report.pdf>)

## 6. Effect of This Legislation

Current CDCR regulations and policy prohibit male correctional officers from conducting clothed body searches of female inmates except in emergencies. (Cal. Code Regs., tit. 15, § 3287, subd. (b); DOM § 52050.16.4.) Both regulations and department policy specify that the emergency exception to the general prohibition on cross-gender searches of female inmates ends once there are female correctional officers available to conduct searches. This bill would codify the prohibition on cross-gender pat-downs of female inmates and would specify an exception only when “the inmate presents a risk of immediate harm to herself or others, or risk of escape, and there is not a female correctional officer available to conduct the search.”

The DOM generally prohibits cross-gender viewing of showering, other bathroom activities, and changing. (DOM § 54040.5.) However, the policy provides an exception in exigent circumstances or when such viewing is incidental to routine cell checks. This bill would generally codify this prohibition, but specifies an exception only when “an inmate in the area presents a risk of immediate harm to herself or others or if there is a medical emergency in the area.” In addition, this bill specifies that a male correctional officer is prohibited from entering



into a prohibited area if there is a female correctional officer who can resolve the situation in a safe and timely manner without his assistance.

The DOM requires staff to announce their presence when entering a housing unit that houses inmates of the opposite biological sex in order to minimize cross-gender exposure. (DOM § 54040.4.) This bill generally codifies this requirement but specifies that it is to “prevent incidental viewing.”

The DOM requires staff to document all cross-gender pat-down searches of female inmates on a specialized form and requires that form to be reviewed by the officer’s supervisor and then sent to the institutional PREA Compliance Manager. (DOM §§ 54040.5, 52050.16.4.) This bill would codify the requirement that each cross-gender pat-down search of a female inmate was documented. In addition, this bill would require documentation of each incident of a male correctional officer entering a prohibited area, would establish a requirement that an incident be documented within three days of the incident, and would require the documentation to be reviewed by the warden.

## **7. Argument in Support**

The National Association of Social Workers, California Chapter writes:

AB 2550...would improve the treatment of women who are incarcerated and reduce potential trauma by implementing policies that enforce gender specific practices.

...Women who are incarcerated often have very high rates of past traumatic experiences with 86% of women in jails and prisons having reported being survivors of past sexual violence. In addition, 77% have reported being survivors of partner violence.

Allowing male guards to observe women who are incarcerated at all times-taking showers, dressing, going to the bathroom and being strip searched fails to acknowledge the ongoing suffering and trauma that can occur through these interactions. Consistent with the National Prison Rape Elimination Act (PREA) standards, this bill would further the goal of preventing sexual abuse and harassment and enhancing sexual safety for this vulnerable population.

**-- END --**