

Date of Hearing: April 7, 2026  
Counsel: Kimberly Horiuchi

## ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

AB 2556 (Boerner) – As Introduced February 20, 2026

**SUMMARY:** Eliminates exceptions related to sex offenses occurring in state prison or local detention facilities from the rape shield law.

**EXISTING LAW:**

- 1) Mandates that for specified sex offenses, if evidence of sexual conduct of the complaining witness is offered to attack the credibility of the complaining witness, the following procedures be followed:
  - a) A written motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevance of evidence of the sexual conduct of the complaining witness that is proposed to be presented and of its relevance in attacking the credibility of the complaining witness.
  - b) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated. The affidavit shall be filed under seal and only unsealed by the court to determine if the offer of proof is sufficient to order a hearing, as specified. After that determination, the affidavit shall be resealed by the court.
  - c) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at the hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant.
  - d) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant, and is not inadmissible, as specified, the court may make an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.
  - e) An affidavit resealed by the court shall remain sealed, unless the defendant raises an issue on appeal or collateral review relating to the offer of proof contained in the sealed document. If the defendant raises that issue on appeal, the court shall allow the Attorney General and appellate counsel for the defendant access to the sealed affidavit. If the issue is raised on collateral review, the court shall allow the district attorney and defendant's counsel access to the sealed affidavit. The use of the information contained in the affidavit shall be limited solely to the pending proceeding. (Evid. Code, § 782, subd. (a)(1)-(5).)

- 2) Defines “complaining witness” as:
  - a) The alleged victim of the crime charged the prosecution of which is subject to this law.
  - b) An alleged victim offering testimony of a sex offense, as specified. (Evid. Code, § 782, subd. (b)(1)(A)-(B).)
- 3) Defines “evidence of sexual conduct” as portions of a social media account about the complaining witness, including any text, image, video, or picture, which depict sexual content, sexual history, nudity or partial nudity, intimate sexual activity, communications about sex, sexual fantasies, and other information that appeals to a prurient interest, unless it is related to the alleged offense. (Evid. Code, § 782, subd. (b)(2).)
- 4) States the rape shield hearing procedure is required in prosecutions for rape, aiding and abetting rape, sodomy, oral copulation, child molestation, continuous sexual abuse of children, and sexual penetration except if the alleged crime occurs in a state prison or county jail. (Evid. Code, § 782, subd. (c)(1).)
- 5) Requires the rape shield hearing process when presenting uncharged misconduct evidence and an alleged victim testifies as a victim of a crime listed in Section sexual battery, rape, unlawful sexual intercourse, aggravated sexual abuse of a child, incest, sodomy, oral copulation, child molestation, continuous sexual abuse of a child, sexual penetration, masturbation in public, or annoying or molesting a child, except if the crime is alleged to have occurred in a local detention facility or state prison. (Evid. Code, § 782, subd. (c)(2).)
- 6) States sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy. (Pen. Code, § 286, subd. (a).)
- 7) Provides that any person who participates in an act of sodomy with any person of any age while confined in any state prison or in any local detention facility shall be punished by imprisonment in the state prison, or in a county jail for not more than one year. (Pen. Code, § 286, subd. (e).)
- 8) States that in a criminal action, evidence of the character or a trait of character (in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct) of the victim of the crime for which the defendant is being prosecuted is not made inadmissible by other restrictions if:
  - a) Offered by the defendant to prove conduct of the victim in conformity with the character or trait of character.
  - b) Offered by the prosecution to rebut evidence adduced by the defendant. (Evid. Code, § 1103, subd. (a).)
- 9) Provides that in any prosecution for rape, aiding and abetting rape, sodomy, oral copulation, or sexual penetration, or for assault with intent to commit, attempt to commit, or conspiracy to commit a crime defined in any of those provisions, except where the crime is alleged to have occurred in a local detention facility or in a state prison, opinion evidence, reputation

evidence, and evidence of specific instances of the complaining witness' sexual conduct, or any of that evidence, is not admissible by the defendant in order to prove consent by the complaining witness. (Evid. Code, § 1103, subd. (c)(1).)

- 10) States any officer, agent of a private person or entity, volunteer, or law enforcement officer who engages in sexual activity with a consenting adult who is confined in a detention facility is guilty of a misdemeanor. (Pen. Code, § 289.6, subd. (a)(2).)
- 11) States any officer under the authority of the California Department Corrections and Rehabilitation or facility under contract with CDCR, 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 guilty of a misdemeanor. (Pen. Code, § 289.6, subd. (a)(3).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "AB 2556 would eliminate the current exemptions regarding the use of a victim's sexual history as evidence during sexual assault trials for crimes that take place in custodial settings. By removing the exclusionary language from Evidence Code Sections 782 and 1103, it ensures that a victim's sexual history cannot be used against them without Due Process of the law, regardless of where the assault occurred. This issue was exemplified by a 2023 case in which an inmate attempted to sexually assault a female chaplain in a prison chapel, however, the protections traditionally afforded under these laws did not apply because they occurred within a prison setting. All Californians should have Equal Protection under the law, and AB 2556 would help bridge this gap."
- 2) **Rape Shield Law:** Between 1974 and 1981, following enactment of federal rape shield laws, the Legislature passed amendments to Evidence Code section 782 and 1103 to restrict the ability of a criminal defendant to present evidence of a sexual assault victim's past sexual conduct. (See SB 23 (Watson), Chapter 726, Statutes of 1981; see generally *People v. Fontana* (2010) 49 Cal.4th 351, 362.)

Evidence of the sexual conduct of a complaining witness is admissible in a prosecution for a sex-related offense only under very strict conditions. A defendant may not introduce evidence of specific instances of the complaining witness's sexual conduct, for example, simply to prove, without other evidence, consent by the complaining witness. (Evid. Code, § 1103, subd. (c)(1).)

Under California's rape shield law, specific instances of a complaining witness's sexual conduct are **not admissible** to prove consent by the complaining witness in a prosecution for specified sex offenses. (Evid. Code, § 1103, subd. (c)(1).) **Such evidence may be admissible, though, when offered to attack the credibility of the complaining witness, provided that its probative value outweighs the danger of undue prejudice and the defendant otherwise complies with the procedures**

**set forth in Evidence Code section 782.** First, the defendant must file a written motion and an offer of proof detailing the relevancy of the evidence. (Id., § 782, subd. (a)(1), (2).) If the court finds the offer sufficient, it shall order a hearing out of the presence of the jury to allow questioning of the complaining witness regarding the offer of proof. (Id., § 782, subd. (a)(3).) If the court finds the evidence relevant [citation omitted] and admissible under section 352, the court may make an order stating what evidence may be introduced by the defendant and what questions are permitted. (Id., § 782, subd. (a)(4).) (*People v. Fontana, supra*, 49 Cal.4th at p. 354.) (Emphasis added.)

If evidence of prior sexual conduct is conceivably relevant to credibility, rape shield, in accordance with, Evidence Code section 782 requires that: (a) the defendant submit a written motion “stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness”; (b) the motion be accompanied by an affidavit, filed under seal, that contains the offer of proof.

If, after that, the court finds the offer of proof is sufficient, it holds a hearing out of the presence of the jury, and at the hearing, allow the questioning of the complaining witness regarding the offer of proof made by the defendant. If the court, following the hearing, finds that the evidence is relevant, as specified, and is not inadmissible as more prejudicial than probative, then it may make an order stating what evidence may be introduced by the defendant and the nature of the questions to be permitted. (See Evid. Code, § 782, subd. (a)(1)-(4); *People v. Fontana* (2010) 49 Cal.4th 351, 362.)

The Legislature's purpose in crafting these limitations represents a valid determination that victims of sex-related offenses deserve heightened protection against surprise, harassment, and unnecessary invasions of privacy.

By affording victims protection in most instances, these provisions also encourage victims of sex-related offenses to participate in legal proceedings against alleged offenders. (Letwin). Accordingly, our courts have properly exercised the discretion afforded by Evidence Code section 782 narrowly and we emphasize that “great care must be taken to ensure that this exception to the general rule barring evidence of a complaining witness' prior sexual conduct ... does not impermissibly encroach upon the rule itself and become a ‘back door’ for admitting otherwise inadmissible evidence” (*People v. Rioz* (1984) 161 Cal. App. 3d 905, 916–919; accord, *Michigan v. Lucas* (1991) 500 U.S. 145, 149–150; Letwin, *Unchaste Character”: Ideology, and the California Rape Evidence Laws* (1980–1981) 54 So. Cal. L.Rev. 35, 40; accord, rule 412, 28 U.S.C.) Advisory Com. Note to Fed. Rules Evid.

Most evidence of alleged sexual misconduct by a victim is not admissible. Even if it is proper impeachment evidence, courts usually find that it is more prejudicial than probative.<sup>1</sup>

One exception in the Rape Shield law pertains to alleged conduct that occurs in-custody (also known as the “detention” exception.) (Evid. Code, § 782, subd. (c)(1)-(3).) Evidence Code section 782, subdivision (c)(1) states the rape shield requirements apply:

“In a prosecution under Section 261, 262, 264.1, 286, 287, 288, 288.5, or 289 of, or former Section 288a of, the Penal Code, or for assault with intent to commit, attempt to commit, or conspiracy to commit any crime defined in any of those sections, **except if the crime is alleged to have occurred in a local detention facility**, as defined in Section 6031.4 of the Penal Code, or in **the state prison**, as defined in Section 4504.”

Evidence Code section 1103, subdivision (c)(1) similarly states that character evidence is inadmissible except as provided in this section:

Notwithstanding any other provision of this code to the contrary, and except as provided in this subdivision, in any prosecution under Section 261 or 264.1 of the Penal Code, or under Section 286, 287, or 289 of, or former Section 262 or 288a of, the Penal Code, or for assault with intent to commit, attempt to commit, or conspiracy to commit a crime defined in any of those sections, **except where the crime is alleged to have occurred in a local detention facility**, as defined in Section 6031.4, **or in a state prison**, as defined in Section 4504, opinion evidence, reputation evidence, and evidence of specific instances of the complaining witness’ sexual conduct, or any of that evidence, is not admissible by the defendant in order to prove consent by the complaining witness.

The detention exception was added by SB 23 (Watson), Chapter 726, Statutes of 1981. When the bill was in the Senate Judiciary Committee, ACLU and others pointed out that sodomy was a criminal offense in and of itself at that time – meaning homosexual relationships were *per se* criminal. Moreover, any consensual sexual relations **between inmates** in state prison were, and still are, *per se* illegal.<sup>2</sup> Accordingly, ACLU asked Senator Watson to except out sodomy to account for statutory bigotry against the gay community. However, in an effort to

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<sup>1</sup> The court made clear that the legislative intent of avoiding invasion of privacy is mostly paramount to any relevance claim. “By narrowly exercising the discretion conferred upon the trial court in this screening process, California courts have not allowed the credibility exception in the rape shield statutes to result in an undermining of the legislative intent to limit public exposure of the victim’s prior sexual history. (See, e.g., *People v. Blackburn*, *supra*, 56 Cal. App. 3d at pp. 692-693; *In re Wright* (1978) 78 Cal. App. 3d 788, 805-806; *People v. Guthreau* (1980) 102 Cal. App. 3d 436, 444.) Thus, the credibility exception has been utilized sparingly, most often in cases where the victim’s prior sexual history is one of prostitution.” (*People v. Chandler* (1997) 56 Cal.App.4th 703, 708.)

<sup>2</sup> See Pen. Code, § 286, subd. (e)[“ Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4504, or in any local detention facility, as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

compromise, Watson agreed to except out what may be consensual sex between inmates in custody. However, despite the detention exception, the rape shield law still applies even in cases where the victim is incarcerated and the victim of sexual assault. The rape shield law is aimed at limiting attacks on a victim's credibility based on evidence of prior sexual conduct in order to show a person would have consented to sex.

Even without the application of the rape shield law, evidence of consent would be irrelevant for a person in a custodial setting because, as stated above, a person in a custodial setting cannot legally consent. However, if defendant alleges the sexual act was, in fact, consensual, the alleged victim must be capable of consent, and the proffered evidence is relevant to actual consent. This was not intended, and does not, in its application, eliminate any protections for victims of sexual assault in custody. The basic rules in Evidence Code section 780 pertaining to witness credibility, and Evidence Code section 352 relating to the prejudicial effect of even relevant evidence, still apply.

3) **Sexual Assault of a Person in Custody:** Incarcerated people and staff do experience sexual assault in custody. According to the Rape, Abuse, and Incest National Network (RAINN):

In 2020 alone, U.S. correctional institutions reported over 36,000 allegations of sexual victimization. Of these, 8,628 involved staff sexual misconduct, and 7,449 involved staff sexual harassment.<sup>3</sup>

Penal Code section 261, which defines rape, includes rape where the act was accomplished against the victim's will by threatening them with the use of public authority. (Pen. Code, § 261, subd. (a)(7).) Penal Code section 289.6 expressly criminalizes even apparent consensual conduct between staff and incarcerated people. However, from a sentencing perspective, violations of the general prohibition against sex in prison are much different than an intentional sex crime.

The Office of the Inspector General (OIG) currently reviews allegations of staff misconduct in order to ensure CDCR is properly responding to allegations of sexual assault against correction officers and staff.

Current law requires the OIG to determine the adequacy of each investigation and whether discipline 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 especially—have been plagued with allegations of staff sexual assault and sexual misconduct for years.

In 2024, 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

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<sup>3</sup> <https://rainn.org/get-the-facts-about-sexual-violence/get-the-facts-about-sexual-violence-in-law-enforcement-custody/>

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 60 counts of rape, sodomy, sexual battery, and rape under color of authority. The offender was sentenced to 200 plus years in prison.<sup>4</sup>

The CIW and CCWF cases were sexual assault in violation of Penal Code section 261, subd. (a)(2) (rape by force, threat, or fear of force or threat) and Penal Code section 261, subdivision (a)(7) (rape under color of authority), forcible sodomy, forcible oral copulation, and a litany of other sex crimes. The correctional officer was sentenced to 224 years in prison.<sup>5</sup> It did not matter for purposes of charging the correctional officer that the women were in a carceral setting. It was just assault because it lacked both actual and constructive consent. There was no need to rely solely on the lesser included offense of sexual misconduct of a person in custody and it is likely that the requirements of rape shield would still apply.<sup>6</sup>

- 4) **Sodomy:** The act of sodomy is still criminalized in the Penal Code. Penal Code section 286, subdivision (a) states,

“Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.”

Additionally, case law from the 1970s, which has never been overruled or abrogated by legislation states, “consent is not a defense to a sodomy prosecution. (*People v. Brown* (1970) 6 Cal.App.3d 619, 624.) While *Lawrence v. Texas* (2003) 539 U.S. 558, held that laws criminalizing consensual sexual conduct between individuals of the same sex violates the Due Process Clause of the Fourteenth Amendment, the carceral setting is the only place where sexual contact between inmates, even if consensual, is prohibited. (See fn. 1, *supra*.; *People v. Frazier* (1967) 256 Cal.App.2d 630; *People v. Santibanez* (1979) 91 Cal.App.3d 287, 289-290 [“However, it is clear that prisoners have no cognizable right to sexual privacy in a jail cell.”])

In *People v. Frazier, supra*, the court held that inmates had no right of privacy in their sexual choices and prohibitions against even consensual sex between inmates was not unconstitutional.

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<sup>4</sup> <https://abc30.com/post/former-correctional-officer-sentenced-224-years-prison-sexually-assaulting-female-inmates/17542123/>

<sup>5</sup> <https://www.kqed.org/news/12022075/former-guard-california-womens-prison-found-guilty-59-counts-sexual-abuse>

<sup>6</sup> The examples provided by the author were all sexual assault cases and it does not appear from available records that the alleged rape shield evidence was admitted. Defendants are entitled to make whatever arguments they want to a judge, but at the end of the day, the court must find the evidence relevant and credible. That does not appear to be the case in any of these instances, nor would the proposed change prevent defendants from asking a to admit attacks on the victim’s credibility.

A correctional officer conducting a search of cells for contraband entered the apparently unoccupied cell assigned to Frazier. A blanket was draped over the end and side of the bed. The officer lifted it, and beneath the bed saw the two defendants, nude, engaged in an act of sodomy. No evidence was introduced by the defense. Appellant argued that his conduct is constitutionally protected under the doctrine of a recent decision (*Griswold v. Connecticut*, 381 U.S. 479). Although seven justices concurred in the judgment of reversal in *Griswold*, there are three concurring opinions and two dissents. Thus, the precise ground of decision is not clear.

The majority opinion turns on the right of privacy in the marriage relation, ‘an association for as noble a purpose as any involved in our prior decisions’ (p. 486). The concurring opinion of Justice Goldberg, joined by two other justices, emphasizes the Ninth Amendment, but also turns upon protection of ‘the right of marital privacy’ (p. 486) which ‘is fundamental and basic.’ (p.499) Appellant wholly fails to bring himself within the ambit of *Griswold*. His relationship with his fellow prisoner can hardly, under the most advanced views of those who decry the current rigidity of moral judgments, be deemed ‘noble’ or ‘basic.’ Even if the homosexual relationship of consenting adults were deemed entitled to the cloak of privacy in life outside prison walls, appellant cannot don that cloak. (*Frazier, supra*, 256 Cal.App.2d at p. 630-631.)

While *Frazier* and *Santibanez* are cases from the 1970s, they have never been overruled, and *Lawrence* has never applied to the carceral setting. Additionally, *Lawrence* is premised on the penumbra of privacy rights abrogated by *Dobbs v. Jackson Women’s Health Organization* (2022) 597 U.S. 215.<sup>7</sup> Therefore, inmates may be engaging in consensual sex and theoretically, should be allowed to explain that their relationship was consensual.

- 5) **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 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.<sup>8</sup> PREA also created the National Prison Rape Elimination Commission and charged it with developing standards for the elimination of prison rape.

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<sup>7</sup> Schroeder, *Rethinking Rights in a Disappearing Penumbra: How to Expand Upon Reproductive Rights in Court After Dobbs*, New Mexico L. Rev., p. 2 (“For nearly a century the U.S. Supreme Court attempted to fit reproductive rights into the ever-shrinking penumbra left to it by *Buck v. Bell*, and now after *Dobbs* that penumbra seemed to disappear altogether.”)

<sup>8</sup> 34 U.S.C. § 30301 et seq. (previously classified as 42 U.S.C. § 15601 et seq.)

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 F.R.D. 37106.) 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.

The PREA standards contemplate ways for particularly vulnerable inmates who identify as LGBTIA+ or whose appearance or manner does not conform to traditional gender expectations. (*Id.* at pp. 37149-37154.) The standards require training in effective and professional communication with LGBTIA and gender nonconforming inmates and require the screening process to consider whether the inmate is, or is perceived to be, LGBTIA or gender nonconforming. The standards also require that post-incident reviews consider whether the incident was motivated by the inmate's LGBTIA+ identification, status, or perceived status.

*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. (DOM §§ 54040.1-5404.22.)

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. With respect to inmates who are at a high risk for sexual victimization, CDCR's PREA policy provides:

Offenders at high risk for sexual victimization, as identified on the electronic Initial Housing Review, shall not be placed in segregated housing unless an assessment of all available alternatives has been completed, and a determination has been made that there is no available alternative means of separation from likely abusers.

Offenders at high risk for sexual victimization shall have a housing assessment completed immediately or within 24 hours of placement into segregated housing. . . . If a determination is made at the conclusion of the assessment that there are no available alternative means of separation from likely abusers, the inmate will be retained in segregated housing...The offender's retention in segregation should not ordinarily exceed 30 days. (Italics added) (DOM § 54040.6.)

The policy further provides:

Based on information that the offender has been a victim of sexual violence or victimization, the custody supervisor conducting the initial screening shall discuss housing alternatives with the offender in a private location. *The custody supervisor shall not automatically place the offender into administrative segregation.* Consideration shall be given to housing this offender with another offender who has compatible housing needs. . . .

An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness. (DOM § 54040.7.) PREA is not expressly aimed at consensual relationships between inmates, but since any sexual contact in a custodial setting is illegal, it is considered rape as a matter of both law and policy.

At its core, the detention exception may be less relevant today than in the latter part of the 20th Century, but it does serve a purpose to prevent actual evidence of consent from being excluded simply because the sexual conduct at issue constitutes sodomy. The Evidence Code are the "rules" of the road that ensures fair trials. Changes to the Evidence Code should be carefully considered so as not to allow for unfair advantage.

Effective trial advocacy requires storytelling. In many ways, criminal defense attorneys and prosecutors are professional storytellers. They must weave facts and evidence into stories that resonate with the judges' and juries' common sense and ultimately persuade the decisionmaker in the case. In the context of a criminal trial, the defendant's ability to engage in meaningful storytelling arguably takes on constitutional status, enshrined in the right to present a complete defense. That right protects not just the ability to scrutinize the state's proof and offer one's own witnesses, but also the choice of how to tell a compelling story of innocence.

At a criminal trial, evidence rules shape and restrict what stories can be told and how they are told. A judge decides what testimony and physical evidence is and is not admissible, how parties question their witnesses and present evidence, how witnesses can be "impeached" by the other side with evidence that attacks their credibility, and how to instruct juries to use that evidence in deciding the defendant's guilt or innocence.<sup>9</sup>

- 6) **Argument in Support:** According to *San Diego District Attorneys Association*: "Traditionally, the defense relied on challenging the credibility of the rape survivor as a key strategy during a criminal trial. However, in the 1960's and 1970's feminists rights

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<sup>9</sup> Willmott, "Protecting the Right to a Meaningful Defense: Criminal Trial Storytelling," 111 Cal. L. Rev. June 2023, p. 1.)

movements started to redefine the patriarchal dynamics of the crime. It became apparent that rape survivors needed to be able to testify in court with dignity without being afraid that their past could be used as a weapon by the defense to humiliate them, thus inflicting a metaphorical “second rape.” Survivors of rape and their advocates began to force change by passing laws that limited the admission of the survivor’s sexual history in court as a means to encourage women to report the crime. (According to the National Sexual Violence Resource Center 63% of sexual assaults are not reported; rape is the most under-reported crime.) California’s legislature recognized that the character, morality, and sexual history of a victim were largely irrelevant to a sex crime trial and, in 1974, passed the state’s Rape Shield Law.

“Since then, California’s Rape Shield Law has been amended several times as awareness increased and the need for further protection for survivors was recognized. The defense has challenged these laws on a variety of grounds including that the evidentiary rules violate the right to confront one’s accuser and the right against self-incrimination, and that these laws are too vague. However, the courts have overwhelmingly rejected these challenges. Evidence Code section 782 currently protects sexual assault victims from being discredited due to their sexual history. The section further provides a procedure for the defense to make an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of that complaining witness. As an additional safe-guard for survivors, this motion shall be made under seal, with the court having the final say as to whether the evidence is admissible. These protections are deemed critical to protecting the survivor’s reputation and credibility.

“In 1981, California inexplicably placed an exception into the Rape Shield Law that still exists today. The Legislature carved out an exception that prevents the Rape Shield Law from applying when the sexual offenses are committed in prison or jail. This exception is not based upon the status of the victim, but rather solely on the geographic location where the victim was assaulted.

“All fifty states, the Federal Rules of Evidence, the District of Columbia, and the United States territories of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the US Virgin Islands have some iteration of a Rape Shield Law. Only California includes a Prison/Jail exception. The “jail house exception” is an anachronism that must be eliminated from California’s Rape Shield Law.

“Most sexual assault victims in the prison or jail setting are inmates. The Prison/Jail exception applies to sentenced inmates as well as detainees who are presumed innocent and awaiting trial. The fact that one has been accused or convicted of a crime does not make them less worthy of the protection of the law. There is no compelling reason to deny inmates the basic protections offered to all other sexual assault victims.

“The “jail house exception” is not limited only to prison inmates or jail inmates who are victims of sexual assault. The “jail house exception” also applies to sexual assault victims such as correctional officers, detentions deputies, non-law enforcement employees, staff, visitors, family members, attorneys, medical personnel, members of the clergy. All denied the protection of the Rape Shield Law if they are unfortunate enough to be sexually assaulted on prison or jail property. There are several recent California cases which illustrate this inequity:

- San Diego County (2023): An inmate at the Richard J. Donovan Correctional Facility sexually assaulted a chaplain in the prison chapel. The defense attempted to introduce evidence of the chaplain’s prior sexual history to show that she was not a credible witness. When the chaplain learned her sexual history could potentially be brought out in open court and be used against her, she was extremely traumatized and reluctant to testify, even though she had been violently attacked.
- Madera County (2024): An inmate at Central California Women’s Facility sexually assaulted multiple inmates. The defense has indicated that they intend to introduce evidence that the inmate victims had been “slutty” (in the words of defense counsel) and use their sexual history with other inmates to show consent and to attack their credibility. This case is pending trial.
- Tuolumne County (2024): An inmate at the Sierra Conservation Center trapped a correctional officer in a control booth and violently raped her over a four-hour period. The defense has indicated that they intend to introduce evidence of the correctional officer victim’s sexual history to show consent and to attack their credibility. This case is pending trial.

“AB 2556 is about fairness, equality, and treating sexual assault victims with dignity. It is a simple fix to a misguided and long-outdated legal exclusion. By placing California sexual assault victims on equal footing with sexual assault victims across all other jurisdictions in the United States, it reaffirms California’s commitment to the equal protection of ALL citizens. It is the right thing to do.”

- 7) **Argument in Opposition:** None submitted
- 8) **Related Legislation:** AB 2014 (Elhawary) requires the court, in a criminal proceeding where a party seeks to admit evidence or make an argument that is likely to trigger gender-based stereotypes, to also consider specified factors when balancing the probative value of that evidence against the substantial danger of undue prejudice. AB 2014 is pending hearing in this committee.
- 9) **Prior Legislation:** SB 836 (Weiner), Chapter 168, Statutes of 2022, prohibited the disclosure of a person's immigration status in open court by a party or their attorney in a civil action other than a personal injury or wrongful death action (where evidence of immigration status is never admissible) unless the judge presiding over the matter first determines that the evidence is admissible at an in camera hearing.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Correctional Peace Officers Association (CCPOA)  
California District Attorneys Association  
Riverside County District Attorney  
San Diego County District Attorney's Office

**Opposition**

None submitted.

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