
CONSENT

Bill No: AB 2556
Author: Boerner (D)
Introduced: 2/20/26
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 6-0, 6/9/26
AYES: Arreguín, Seyarto, Caballero, Cortese, Pérez, Wiener

ASSEMBLY FLOOR: 68-0, 4/16/26 (Consent) - See last page for vote

SUBJECT: Evidence: credibility of witnesses and evidence affected or excluded by extrinsic policies

SOURCE: San Diego County District Attorney's Office

DIGEST: This bill eliminates exceptions related to sex offenses occurring in a state prison or local detention facility from the Rape Shield Law.

ANALYSIS:

Existing law:

- 1) States that only relevant evidence is admissible, and except as otherwise provided by statute, all relevant evidence is admissible. (Evidence (Evid.) Code, §§ 350, 351.)
- 2) Defines “relevant evidence” as evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evid. Code, § 210.)
- 3) Authorizes a court in its discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate

undue consumption of time or create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. (Evid. Code, § 352.)

- 4) Provides that the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of the witness's testimony at the hearing, except as otherwise provided by statute. Provides that this includes but is not limited to the following:
 - a) The witness's demeanor while testifying and the manner in which the witness testifies.
 - b) The character of their testimony.
 - c) The extent of their capacity to perceive, to recollect, or to communicate any matter about which the witness testifies.
 - d) The extent of their opportunity to perceive any matter about which the witness testifies.
 - e) The witness's character for honesty or veracity or their opposites.
 - f) The existence or nonexistence of a bias, interest, or other motive.
 - g) A statement previously made by the witness that is consistent with their testimony at the hearing.
 - h) A statement made by the witness that is inconsistent with any part of their testimony at the hearing.
 - i) The existence or nonexistence of any fact testified to by the witness.
 - j) The witness's attitude toward the action in which they testify or toward the giving of testimony.
 - k) The witness's admission of untruthfulness. (Evid. Code, § 780.)

- 5) Requires, 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 must 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 must be accompanied by an affidavit in which the offer of proof must be stated. The affidavit must 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 must be resealed by the court.
- c) If the court finds that the offer of proof is sufficient, the court must 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 not inadmissible, 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 must 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 must 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 must allow the district attorney and defendant's counsel access to the sealed affidavit. The use of the information contained in the affidavit is limited solely to the pending proceeding. (Evid. Code, § 782, subd. (a)(1)-(5).)
- 6) Defines “complaining witness” as: the alleged victim of the crime charged, the prosecution of which is subject to this law; or, an alleged victim offering testimony of a sex offense, as specified. (Evid. Code, § 782, subd. (b)(1).)
 - 7) 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).)
 - 8) Provides that 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 local detention facility. (Evid. Code, § 782, subd. (c)(1).)

- 9) Requires the rape shield hearing process when presenting uncharged misconduct evidence and an alleged victim testifies as a victim of 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).)
- 10) Provides 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: offered by the defendant to prove conduct of the victim in conformity with the character or trait of character; offered by the prosecution to rebut evidence adduced by the defendant. (Evid. Code, § 1103, subd. (a).)
- 11) 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).)

This bill eliminates exceptions related to sex offenses that take place in a state prison or local detention facility from the rape shield law.

Background

The Rape Shield Law was passed in California in 1974. The Legislature created limitations on the introduction of evidence in specific sex-related cases to recognize that victims of sex-related offenses deserve heightened protection against “surprise, harassment, and unnecessary invasions of privacy.” (*People v. Fontana* (2010) 49 Cal. 4th 351, 362-63, citing *People v. Rioz* (1984) 161 Cal.App.3d 905, 916-17.) The crimes that implicate the Rape Shield Law are: sexual battery, rape, unlawful sexual intercourse with a minor, spousal rape, incest, sodomy, oral copulation by force, sexual abuse of a child under 14 or a dependent person, continuous sexual abuse of a child, forcible penetration with a foreign object, indecent exposure, and annoying or molesting a minor.

The Rape Shield Law generally prohibits the introduction of evidence against an alleged victim about that person's prior sexual conduct, sexual reputation, or manner of dress in order to show that the person consented to the sexual act in question. (Evid. Code, § 1103, subd. (c).) However, impeachment evidence of an alleged victim, or a witness, that relates to sexual conduct may be introduced by following a specified procedure—filing a written motion with the court in a criminal jury trial where the judge will make a ruling on admissibility of that evidence. (Evid. Code, § 782.) Other impeachment evidence intended to attack the credibility of a witness that is not sexual in nature is not required to be vetted first by a judge.

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.

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) provides that 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:

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), to account for consensual sex acts between incarcerated individuals in cases where one of the individuals claimed rape in order to avoid punishment (because participating in an act of sodomy or oral sex in carceral settings is unlawful).

This bill eliminates exceptions related to sex offenses that take place in a state prison or local detention facility from Evidence Code sections 782 and 1103.

FISCAL EFFECT: Appropriation: No Fiscal Com.:No Local:No

SUPPORT: (Verified 6/9/26)

San Diego County District Attorney's Office (source)
California District Attorneys Association

OPPOSITION: (Verified 6/9/26)

None received

ASSEMBLY FLOOR: 68-0, 4/16/26

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Ávila Farías, Bains, Bauer-Kahan, Bennett, Boerner, Bryan, Calderon, Caloza, Carrillo, Castillo, Chen, Connolly, Davies, DeMaio, Elhawary, Ellis, Fong, Gabriel, Gallagher, Garcia, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Jackson, Johnson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Michelle Rodriguez, Rogers, Blanca Rubio, Sanchez, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Tangipa, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

NO VOTE RECORDED: Arambula, Berman, Bonta, Dixon, Flora, Harabedian, Hart, Hoover, Irwin, Papan, Celeste Rodriguez, Schiavo

Prepared by: Stephanie Jordan / PUB. S. /
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**** END ****