

Assembly Bill No. 382

Passed the Assembly September 9, 2009

Chief Clerk of the Assembly

Passed the Senate September 3, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 2636 of the Penal Code, relating to the Department of Corrections and Rehabilitation.

LEGISLATIVE COUNSEL'S DIGEST

AB 382, Ammiano. Department of Corrections and Rehabilitation: inmates and wards: classification.

Existing law requires the Department of Corrections and Rehabilitation to classify inmates and wards in order to prevent inmate and ward sexual violence and to promote inmate and ward safety, as specified. Existing law also requires the department to consider specified risk factors when classifying the inmate.

This bill would add the sexual orientation and gender identity of the inmate or ward, as specified, to the list of risk factors to be considered.

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

SECTION 1. (a) The Legislature finds and declares that inmates and wards of the Department of Corrections and Rehabilitation may be at a heightened risk of sexual violence and abuse based on certain risk factors, including being young, being lesbian, gay, bisexual, or transgender, not having served a prior term of commitment, or having a history of mental illness.

(b) It is the intent of the Legislature in enacting this act to ensure that the Department of Corrections and Rehabilitation (1) recognizes that wards or inmates may be at increased risk based on these factors, and (2) provides vulnerable inmates or wards who are determined to be at risk with heightened protection in classification and housing decisions, without automatically subjecting them to highly restrictive or isolated settings or denying them access to programs and services.

SEC. 2. Section 2636 of the Penal Code is amended to read:

2636. For the purposes of this section, all references to classification of wards shall take effect upon the adoption of a classification system for wards developed by the Department of

Corrections and Rehabilitation in compliance with *Farrell v. Allen*, Alameda County Superior Court Case No. RG 03079344.

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

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

- (1) Age of the inmate or ward.
- (2) Self-reported safety concerns related to the sexual orientation and gender identity of the inmate or ward.
- (3) Whether the offender is a violent or nonviolent offender.
- (4) Whether the inmate or ward has served a prior term of commitment.

(5) Whether the inmate or ward has a history of mental illness.

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

(c) The Department of Corrections and Rehabilitation shall not require any inmate or ward to disclose or report his or her sexual orientation or gender identity at any time, and a disclosure or report shall not be discredited solely because it was not provided at an earlier point in time.

(d) The Department of Corrections and Rehabilitation is prohibited from disciplining or otherwise punishing an inmate or ward if the inmate or ward fails to disclose or report his or her sexual orientation or gender identity during all or part of his or her term of commitment.

(e) Nothing in this section shall be construed to require or justify expansion or construction of Department of Corrections and Rehabilitation facilities.

Approved _____, 2009

Governor