

**ASSEMBLY BILL**

**No. 2499**

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**Introduced by Assembly Member Frommer**

February 21, 2002

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An act to amend Section 1108 of the Evidence Code, and to amend Sections 802 and 1272 of, and to add Section 13025 to, the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2499, as introduced, Frommer. Criminal procedure.

Existing law provides that, except as specified, evidence of a person's character is inadmissible when offered to prove his or her conduct on a specified occasion. Existing law creates exceptions to that rule, including that in a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not inadmissible under that rule, except as specified. Existing law provides that the prosecution shall disclose this evidence of other sexual conduct to the defendant at least 30 days before the scheduled date of trial or at such later time as the court may allow for good cause.

This bill would instead require the prosecutor to supply the evidence in compliance with the provisions of law in the Penal Code governing discovery generally. These provide for disclosure 30 days in advance of trial unless there is good cause shown that disclosure should be denied, restricted, or deferred, and for immediate disclosure of any evidence which comes into the possession of the prosecutor less than 30 days before trial absent a similar showing.

Under existing law, annoying or molesting a child under 18 years of age is a misdemeanor, in the absence of specified additional factors.

Under existing law, prosecution for a misdemeanor violation of Section 647.6, must be brought within a year after commission of the offense, unless it is committed with or upon a minor under 14 years of age, in which case prosecution must be commenced within 2 years.

This bill would require a misdemeanor action for violation of that law be commenced within 3 years of the commission of the offense, regardless of the age of the victim.

Under existing law, a person convicted in a misdemeanor case has a right to bail pending appeal.

This bill would state that bail pending appeal from a misdemeanor conviction for stalking, or from a misdemeanor conviction for a violation of certain other provisions of law, if they involve domestic violence, abuse of an elder or dependant adult, or child abuse, shall be determined according to the provisions applicable to felonies.

Existing law provides rules concerning the maintenance and release of public records, and provides for procedures to get those records in the possession of public entities, with specified limitations. Existing law requires certain data be collected concerning domestic violence cases, compiled, and supplied to the Attorney General.

This bill would require every local and state law enforcement agency to keep and maintain all records generated or collected in the course of any investigation of a domestic violence case or case involving the sexual abuse of a minor, for a minimum of 10 years.

By imposing additional duties on local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



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

1 SECTION 1. Section 1108 of the Evidence Code is amended  
2 to read:

3 1108. (a) In a criminal action in which the defendant is  
4 accused of a sexual offense, evidence of the defendant's  
5 commission of another sexual offense or offenses is not made  
6 inadmissible by Section 1101, if the evidence is not inadmissible  
7 pursuant to Section 352.

8 (b) In an action in which evidence is to be offered under this  
9 section, the people shall disclose the evidence to the defendant,  
10 including statements of witnesses or a summary of the substance  
11 of any testimony that is expected to be offered, ~~at least 30 days~~  
12 ~~before the scheduled date of trial or at such later time as the court~~  
13 ~~may allow for good cause in compliance with the provisions of~~  
14 *Section 1054.7 of the Penal Code.*

15 (c) This section shall not be construed to limit the admission or  
16 consideration of evidence under any other section of this code.

17 (d) As used in this section, the following definitions shall  
18 apply:

19 (1) "Sexual offense" means a crime under the law of a state or  
20 of the United States that involved any of the following:

21 (A) Any conduct proscribed by Section 243.4, 261, 261.5, 262,  
22 264.1, 266c, 269, 286, 288, 288a, 288.2, 288.5, or 289, or  
23 subdivision (b), (c), or (d) of Section 311.2 or Section 311.3,  
24 311.4, 311.10, 311.11, 314, or 647.6, of the Penal Code.

25 (B) Contact, without consent, between any part of the  
26 defendant's body or an object and the genitals or anus of another  
27 person.

28 (C) Contact, without consent, between the genitals or anus of  
29 the defendant and any part of another person's body.

30 (D) Deriving sexual pleasure or gratification from the  
31 infliction of death, bodily injury, or physical pain on another  
32 person.

33 (E) An attempt or conspiracy to engage in conduct described in  
34 this paragraph.

35 (2) "Consent" shall have the same meaning as provided in  
36 Section 261.6 of the Penal Code, except that it does not include  
37 consent which is legally ineffective because of the age, mental  
38 disorder, or developmental or physical disability of the victim.



1 SEC. 2. Section 802 of the Penal Code is amended to read:

2 802. (a) Except as provided in subdivision (b), prosecution  
3 for an offense not punishable by death or imprisonment in the state  
4 prison shall be commenced within one year after commission of  
5 the offense.

6 (b) Prosecution for a misdemeanor violation of Section 647.6  
7 or former Section 647a, ~~committed with or upon a minor under the~~  
8 ~~age of 14 years~~ shall be commenced within ~~two~~ *three* years after  
9 commission of the offense.

10 (c) Prosecution of a misdemeanor violation of Section 729 of  
11 the Business and Professions Code shall be commenced within two  
12 years after commission of the offense.

13 SEC. 3. Section 1272 of the Penal Code is amended to read:

14 1272. After conviction of an offense not punishable with  
15 death, a defendant who has made application for probation or who  
16 has appealed may be admitted to bail:

17 1. As a matter of right, before judgment is pronounced pending  
18 application for probation in cases of misdemeanors, or when the  
19 appeal is from a judgment imposing a fine only.

20 2. As a matter of right, before judgment is pronounced pending  
21 application for probation in cases of misdemeanors, or when the  
22 appeal is from a judgment imposing imprisonment in cases of  
23 misdemeanors, *except that bail pending appeal from a*  
24 *misdemeanor conviction for a violation of Section 646.9, or from*  
25 *a misdemeanor conviction for a violation of Section 243d, 243.4,*  
26 *273a, 273d, 273.5, 368, 422, or 647.6 or subdivision (a) of Section*  
27 *245 that involves domestic violence, as defined in Section 6211 of*  
28 *the Family Code, abuse of an elder or dependant adult, as defined*  
29 *in Section 15610.07 of the Welfare and Institutions Code, or child*  
30 *abuse, shall be determined pursuant to Section 1272.1.*

31 3. As a matter of discretion in all other cases, except that a  
32 person convicted of an offense subject to this subdivision, who  
33 makes a motion for release on bail subsequent to a sentencing  
34 hearing, shall provide notice of the hearing on the bail motion to  
35 the prosecuting attorney at least five court days prior to the  
36 hearing.

37 SEC. 4. Section 13025 is added to the Penal Code, to read:

38 13025. It shall be the duty of every local and state law  
39 enforcement agency to keep and maintain all records generated or  
40 collected in the course of any investigation of a domestic violence



1 case or a case involving the sexual abuse of a minor for a minimum  
2 of 10 years, including, but not limited to, all law enforcement  
3 reports and witness statements. This section shall not be construed  
4 to reduce the amount of time such records may be required to be  
5 kept or maintained under any other provision of law.

6 SEC. 5. Notwithstanding Section 17610 of the Government  
7 Code, if the Commission on State Mandates determines that this  
8 act contains costs mandated by the state, reimbursement to local  
9 agencies and school districts for those costs shall be made pursuant  
10 to Part 7 (commencing with Section 17500) of Division 4 of Title  
11 2 of the Government Code. If the statewide cost of the claim for  
12 reimbursement does not exceed one million dollars (\$1,000,000),  
13 reimbursement shall be made from the State Mandates Claims  
14 Fund.

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