

ASSEMBLY BILL

No. 220

**Introduced by Committee on Public Safety (Leno (Chair), Cohn,
Dymally, Goldberg, Ruskin, and Spitzer)**

February 3, 2005

An act to amend Sections 4801, 5075.5, and 13823.9 of the Penal Code, to amend Section 3030 of the Family Code, and to amend Section 340.3 of the Code of Civil Procedure, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 220, as introduced, Committee on Public Safety. Domestic violence.

Existing law permits the Board of Prison Terms, at parole hearings, to consider evidence that a prisoner suffered from battered woman syndrome at the time the crime was committed.

This bill would change the reference from "battered woman syndrome" to "intimate partner battering."

Existing law provides that commissioners and deputy commissioners who conduct parole hearings must be trained in domestic violence and battered woman syndrome.

This bill would change the reference from "battered woman syndrome" to "intimate partner battering."

Existing law directs that health care providers be trained in the dynamics of victimization, including battered woman syndrome.

This bill would change the reference to intimate partner battering.

Existing law provides that a court may consider expert testimony about battered woman syndrome when considering whether or not to grant custody to a parent who has been convicted of murdering the other parent of the child who is the subject of the order.

This bill would change the reference from “battered womans syndrome” to “intimate partner battering.”

Existing law precludes a civil action against a defendant based upon a conviction for murder or attempted murder if the defendant presented substantial evidence at trial that he or she was the victim of battered woman syndrome, or if the defendant’s parole was granted due to evidence of battered woman syndrome that was presented to the Board of Prison Terms.

This bill would change the reference from “battered womans syndrome” to “intimate partner battering.”

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

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

1 SECTION 1. Section 4801 of the Penal Code is amended to
 2 read:
 3 4801. (a) The Board of Prison Terms may report to the
 4 Governor, from time to time, the names of any and all persons
 5 imprisoned in any state prison who, in its judgment, ought to
 6 have a commutation of sentence or be pardoned and set at liberty
 7 on account of good conduct, or unusual term of sentence, or any
 8 other cause, including evidence of ~~battered woman syndrome~~
 9 *intimate partner battering and its effects* . For purposes of this
 10 section, ~~“evidence of battered woman syndrome”~~ *“intimate*
 11 *partner battering and its effects”* may include evidence of the
 12 *nature and effects* of physical, emotional, or mental abuse upon
 13 the beliefs, perceptions, or behavior of victims of domestic
 14 violence where it appears the criminal behavior was the result of
 15 that victimization.
 16 (b) The Board of Prison Terms, in reviewing a prisoner’s
 17 suitability for parole pursuant to Section 3041.5, shall consider
 18 any information or evidence that, at the time of the commission
 19 of the crime, the prisoner had ~~suffered from battered woman~~
 20 ~~syndrome~~ *experienced intimate partner battering*, but was
 21 convicted of the offense prior to the enactment of Section 1107
 22 of the Evidence Code by Chapter 812 of the Statutes of 1991.
 23 The board shall state on the record the information or evidence
 24 that it considered pursuant to this subdivision, and the reasons for
 25 the parole decision. The board shall annually report to the

1 Legislature and the Governor on the cases the board considered
2 pursuant to this subdivision during the previous year, including
3 the board’s decision and the findings of its investigations of these
4 cases.

5 SEC. 2. Section 5075.5 of the Penal Code is amended to read:

6 5075.5. All commissioners and deputy commissioners who
7 conduct hearings for the purpose of considering the parole
8 suitability of prisoners or the setting of a parole release date for
9 prisoners, shall receive initial training on domestic violence cases
10 and ~~battered women's syndrome~~ *intimate partner battering and*
11 *its effects*.

12 SEC. 3. Section 13823.93 of the Penal Code is amended to
13 read:

14 13823.93. (a) For purposes of this section, the following
15 definitions apply:

16 (1) “Medical personnel” includes physicians, nurse
17 practitioners, physician assistants, nurses, and other health care
18 providers, as appropriate.

19 (2) To “perform a medical evidentiary examination” means to
20 evaluate, collect, preserve, and document evidence, interpret
21 findings, and document examination results.

22 (b) To ensure the delivery of standardized curriculum,
23 essential for consistent examination procedures throughout the
24 state, one hospital-based training center shall be established
25 through a competitive bidding process, to train medical personnel
26 on how to perform medical evidentiary examinations for victims
27 of child abuse or neglect, sexual assault, domestic violence, elder
28 abuse, and abuse or assault perpetrated against persons with
29 disabilities. The center also shall provide training for
30 investigative and court personnel involved in dependency and
31 criminal proceedings, on how to interpret the findings of medical
32 evidentiary examinations.

33 The training provided by the training center shall be made
34 available to medical personnel, law enforcement, and the courts
35 throughout the state.

36 (c) The training center shall meet all of the following criteria:

37 (1) Recognized expertise and experience in providing medical
38 evidentiary examinations for victims of child abuse or neglect,
39 sexual assault, domestic violence, elder abuse, and abuse or
40 assault perpetrated against persons with disabilities.

1 (2) Recognized expertise and experience implementing the
2 protocol established pursuant to Section 13823.5.

3 (3) History of providing training, including, but not limited to,
4 the clinical supervision of trainees and the evaluation of clinical
5 competency.

6 (4) Recognized expertise and experience in the use of
7 advanced medical technology and training in the evaluation of
8 victims of child abuse or neglect, sexual assault, domestic
9 violence, elder abuse, and abuse or assault perpetrated against
10 persons with disabilities.

11 (5) Significant history in working with professionals in the
12 field of criminalistics.

13 (6) Established relationships with local crime laboratories,
14 clinical laboratories, law enforcement agencies, district
15 attorneys' offices, child protective services, victim advocacy
16 programs, and federal investigative agencies.

17 (7) The capacity for developing a telecommunication network
18 between primary, secondary, and tertiary medical providers.

19 (8) History of leadership in working collaboratively with
20 medical forensic experts, criminal justice experts, investigative
21 social worker experts, state criminal justice, social services,
22 health and mental health agencies, and statewide professional
23 associations representing the various disciplines, especially those
24 specified in paragraph (6) of subdivision (d).

25 (9) History of leadership in working collaboratively with state
26 and local victim advocacy organizations, especially those
27 addressing sexual assault and domestic violence.

28 (10) History and experience in the development and delivery
29 of standardized curriculum for forensic medical experts, criminal
30 justice professionals, and investigative social workers.

31 (11) History of research, particularly involving databases, in
32 the area of child physical and sexual abuse, sexual assault, elder
33 abuse, or domestic violence.

34 (d) The training center shall do all of the following:

35 (1) Develop and implement a standardized training program
36 for medical personnel that has been reviewed and approved by a
37 multidisciplinary peer review committee.

38 (2) Develop a telecommunication system network between the
39 training center and other areas of the state, including rural and
40 ~~midsized~~ *mid-sized* counties. This service shall provide case

1 consultation to medical personnel, law enforcement, and the
2 courts and provide continuing medical education.

3 (3) Provide ongoing basic, advanced, and specialized training
4 programs.

5 (4) Develop guidelines for the reporting and management of
6 child physical abuse and neglect, domestic violence, and elder
7 abuse.

8 (5) Develop guidelines for evaluating the results of training for
9 the medical personnel performing examinations.

10 (6) Provide standardized training for law enforcement officers,
11 district attorneys, public defenders, investigative social workers,
12 and judges on medical evidentiary examination procedures and
13 the interpretation of findings. This training shall be developed
14 and implemented in collaboration with the Peace Officer
15 Standards and Training Program, the California District
16 Attorney's Association, the California Peace Officers
17 Association, the California Police Chiefs Association, the
18 California State Sheriffs Association, the California Association
19 of Crime Laboratory Directors, the California Sexual Assault
20 Investigators Association, the California Alliance Against
21 Domestic Violence, the Statewide California Coalition for
22 Battered Women, the Family Violence Prevention Fund, child
23 victim advocacy organizations, the California Welfare Directors
24 Association, the California Coalition Against Sexual Assault, the
25 Department of Justice, the agency or agencies designated by the
26 Director of Finance pursuant to Section 13820, the Child Welfare
27 Training Program, and the University of California extension
28 programs.

29 (7) Promote an interdisciplinary approach in the assessment
30 and management of child abuse and neglect, sexual assault, elder
31 abuse, domestic violence, and abuse or assault against persons
32 with disabilities.

33 (8) Provide training in the dynamics of victimization,
34 including, but not limited to, rape trauma syndrome, ~~battered~~
35 ~~woman syndrome~~ *intimate partner battering and its effects*, the
36 effects of child abuse and neglect, and the various aspects of
37 elder abuse. This training shall be provided by individuals who
38 are recognized as experts within their respective disciplines.

1 (e) Nothing in this section shall be construed to change the
2 scope of practice for any health care provider, as defined in other
3 provisions of law.

4 SEC. 4. Section 3030 of the Family Code is amended to read:

5 3030. (a) No person shall be granted physical or legal
6 custody of, or unsupervised visitation with, a child if the person
7 is required to be registered as a sex offender under Section 290 of
8 the Penal Code where the victim was a minor, or if the person
9 has been convicted under Section 273a, 273d, or 647.6 of the
10 Penal Code, unless the court finds that there is no significant risk
11 to the child and states its reasons in writing or on the record.

12 (b) No person shall be granted custody of, or visitation with, a
13 child if the person has been convicted under Section 261 of the
14 Penal Code and the child was conceived as a result of that
15 violation.

16 (c) No person shall be granted custody of, or unsupervised
17 visitation with, a child if the person has been convicted of murder
18 in the first degree, as defined in Section 189 of the Penal Code,
19 and the victim of the murder was the other parent of the child
20 who is the subject of the order, unless the court finds that there is
21 no risk to the child’s health, safety, and welfare, and states the
22 reasons for its finding in writing or on the record. In making its
23 finding, the court may consider, among other things, the
24 following:

25 (1) The wishes of the child, if the child is of sufficient age and
26 capacity to reason so as to form an intelligent preference.

27 (2) Credible evidence that the convicted parent was a victim of
28 abuse, as defined in Section 6203, committed by the deceased
29 parent. That evidence may include, but is not limited to, written
30 reports by law enforcement agencies, child protective services or
31 other social welfare agencies, courts, medical facilities, or other
32 public agencies or private nonprofit organizations providing
33 services to victims of domestic abuse.

34 (3) Testimony of an expert witness, qualified under Section
35 1107 of the Evidence Code, that the convicted parent suffers
36 from the effects of ~~battered women’s syndrome~~ *intimate partner*
37 *battering*.

38 Unless and until a custody or visitation order is issued pursuant
39 to this subdivision, no person shall permit or cause the child to

1 visit or remain in the custody of the convicted parent without the
2 consent of the child’s custodian or legal guardian.

3 (d) The court may order child support that is to be paid by a
4 person subject to subdivision (a), (b), or (c) to be paid through
5 the local child support agency, as authorized by Section 4573 of
6 the Family Code and Division 17 (commencing with Section
7 17000) of this code.

8 (e) The court shall not disclose, or cause to be disclosed, the
9 custodial parent’s place of residence, place of employment, or the
10 child’s school, unless the court finds that the disclosure would be
11 in the best interest of the child.

12 SEC. 5. Section 340.3 of the Code of Civil Procedure is
13 amended to read:

14 340.3. (a) Unless a longer period is prescribed for a specific
15 action, in any action for damages against a defendant based upon
16 the defendant’s commission of a felony offense for which the
17 defendant has been convicted, the time for commencement of the
18 action shall be within one year after judgment is pronounced.

19 (b) (1) Notwithstanding subdivision (a), an action for
20 damages against a defendant based upon the defendant’s
21 commission of a felony offense for which the defendant has been
22 convicted may be commenced within 10 years of the date on
23 which the defendant is discharged from parole if the conviction
24 was for any offense specified in paragraph (1), except voluntary
25 manslaughter, (2), (3), (4), (5), (6), (7), (9), (16), (17), (20), (22),
26 (25), (34), or (35) of subdivision (c) of Section 1192.7 of the
27 Penal Code.

28 (2) No civil action may be commenced pursuant to paragraph
29 (1) if any of the following applies:

30 (A) The defendant has received either a certificate of
31 rehabilitation as provided in Chapter 3.5 (commencing with
32 Section 4852.01) of Title 6 of Part 3 of the Penal Code or a
33 pardon as provided in Chapter 1 (commencing with Section
34 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of
35 Part 3 of the Penal Code.

36 (B) Following a conviction for murder or attempted murder,
37 the defendant has been paroled based in whole or in part upon
38 evidence presented to the Board of Prison Terms that the
39 defendant committed the crime because he or she was the victim
40 of ~~battered women’s syndrome~~ *intimate partner battering*.

1 (C) The defendant was convicted of murder or attempted
 2 murder in the second degree in a trial at which substantial
 3 evidence was presented that the person committed the crime
 4 because he or she was a victim of ~~battered women's syndrome~~
 5 *intimate partner battering*.

6 (c) If the sentence or judgment is stayed, the time for the
 7 commencement of the action shall be tolled until the stay is
 8 lifted. For purposes of this section, a judgment is not stayed if the
 9 judgment is appealed or the defendant is placed on probation.

10 (d) (1) Subdivision (b) shall apply to any action commenced
 11 before, on, or after the effective date of this section, including
 12 any action otherwise barred by a limitation of time in effect prior
 13 to the effective date of this section, thereby reviving those causes
 14 of action that had lapsed or expired under the law in effect prior
 15 to the effective date of this section.

16 (2) Paragraph (1) does not apply to either of the following:

17 (A) Any claim that has been litigated to finality on the merits
 18 in any court of competent jurisdiction prior to January 1, 2003.
 19 For purposes of this section, termination of a prior action on the
 20 basis of the statute of limitations does not constitute a claim that
 21 has been litigated to finality on the merits.

22 (B) Any written, compromised settlement agreement that has
 23 been entered into between a plaintiff and a defendant if the
 24 plaintiff was represented by an attorney who was admitted to
 25 practice law in this state at the time of the settlement, and the
 26 plaintiff signed the agreement.

27 (e) Any restitution paid by the defendant to the victim shall be
 28 credited against any judgment, award, or settlement obtained
 29 pursuant to this section. Any judgment, award, or settlement
 30 obtained pursuant to an action under this section shall be subject
 31 to the provisions of Section 13966.01 of the Government Code.