

AMENDED IN ASSEMBLY MARCH 8, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 114**

**Introduced by Assembly Member Cohn**  
(Principal coauthor: Senator Alquist)

January 12, 2005

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An act to amend Section 1109 of the Evidence Code, relating to admissibility of evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 114, as amended, Cohn. Child abuse: evidence.

Under existing law, evidence of a person's character, such as opinion or specific instances of conduct, is generally not admissible to provide a defendant's conduct on a particular occasion, with specified exceptions. Existing law provides, however, that when a defendant is accused of domestic violence in a criminal action, evidence of the defendant's prior acts of domestic violence may be admitted to prove the defendant's conduct, except as to the findings and declarations of a regulatory agency or when the acts occurred more than 10 years ago or the court exercises its discretion to exclude the evidence of prior acts, as specified.

This bill would provide that when a defendant is accused of child abuse in a criminal action, evidence of the defendant's prior acts of domestic violence may be admitted to prove the defendant's conduct, except as specified. The bill would also define "child abuse" for purposes of that provision and would make other nonsubstantive changes.

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 1109 of the Evidence Code is amended  
2 to read:

3 1109. (a) (1) Except as provided in subdivision (e) or (f), in  
4 a criminal action in which the defendant is accused of an offense  
5 involving domestic violence, evidence of the defendant's  
6 commission of other domestic violence is not made inadmissible  
7 by Section 1101 if the evidence is not inadmissible pursuant to  
8 Section 352.

9 (2) Except as provided in subdivision (e) or (f), in a criminal  
10 action in which the defendant is accused of an offense involving  
11 abuse of an elder or dependent person, evidence of the  
12 defendant's commission of other abuse of an elder or dependent  
13 person is not made inadmissible by Section 1101 if the evidence  
14 is not inadmissible pursuant to Section 352.

15 (3) Except as provided in subdivision (e) or (f), in a criminal  
16 action in which the defendant is accused of an offense involving  
17 child abuse, evidence of the defendant's commission of domestic  
18 violence is not made inadmissible by Section 1101 if the  
19 evidence is not inadmissible pursuant to Section 352.

20 (b) In an action in which evidence is to be offered under this  
21 section, the people shall disclose the evidence to the defendant,  
22 including statements of witnesses or a summary of the substance  
23 of any testimony that is expected to be offered, in compliance  
24 with the provisions of Section 1054.7 of the Penal Code.

25 (c) This section shall not be construed to limit or preclude the  
26 admission or consideration of evidence under any other statute or  
27 case law.

28 (d) As used in this section:

29 (1) "Abuse of an elder or dependent person" means physical or  
30 sexual abuse, neglect, financial abuse, abandonment, isolation,  
31 abduction, or other treatment that results in physical harm," pain,  
32 or mental suffering, the deprivation of care by a caregiver, or  
33 other deprivation by a custodian or provider of goods or services  
34 that are necessary to avoid physical harm or mental suffering.

35 (2) "Child abuse" means an act proscribed by Section 273a,  
36 ~~273d, 288.5, or 273d, or 288.5~~ or any act described in Section  
37 11165.1 of the Penal Code.

1 (3) “Domestic violence” has the meaning set forth in Section  
2 13700 of the Penal Code. Subject to a hearing conducted  
3 pursuant to Section 352, which shall include consideration of any  
4 corroboration and remoteness in time, “domestic violence” has  
5 the further meaning as set forth in Section 6211 of the Family  
6 Code, if the act occurred no more than five years before the  
7 charged offense.

8 (e) Evidence of acts occurring more than 10 years before the  
9 charged offense is inadmissible under this section, unless the  
10 court determines that the admission of this evidence is in the  
11 interest of justice.

12 (f) Evidence of the findings and determinations of  
13 administrative agencies regulating the conduct of health facilities  
14 licensed under Section 1250 of the Health and Safety Code is  
15 inadmissible under this section.