

AMENDED IN SENATE MAY 31, 2005

AMENDED IN SENATE MAY 25, 2005

AMENDED IN ASSEMBLY APRIL 13, 2005

AMENDED IN ASSEMBLY MARCH 8, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 114**

**Introduced by Assembly Member Cohn  
(Principal coauthor: Assembly Member Spitzer)**

(Principal coauthor: Senator Alquist)

**(Coauthors: Assembly Members Bass, Garcia, Shirley Horton,  
Matthews, Montanez, Nation, Negrete McLeod, Parra, Pavley,  
Ridley-Thomas, and Vargas)**

January 12, 2005

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An act to amend Section 1109 of the Evidence Code, *and to amend Section 124250 of the Health and Safety Code*, relating to ~~admissibility of evidence~~ *child and domestic abuse*.

LEGISLATIVE COUNSEL'S DIGEST

AB 114, as amended, Cohn. Child *and domestic abuse*: ~~evidence~~.

Under existing law, evidence of a person's character, such as opinion or specific instances of conduct, is generally not admissible to prove 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 child abuse or 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.

*Existing law requires the Maternal and Child Health Branch of the State Department of Health Services to administer a comprehensive shelter-based services grant program to battered women’s shelters. In implementing the program, the department is required to consult with a designated advisory council that shall remain in existence until January 1, 2006.*

*This bill would provide that the advisory council shall remain in existence until January 1, 2010.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. 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 child
- 18 abuse or domestic violence is not made inadmissible by Section
- 19 1101 if the evidence is not inadmissible pursuant to Section 352.

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

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

9 (d) As used in this section:

10 (1) “Abuse of an elder or dependent person” means physical or  
11 sexual abuse, neglect, financial abuse, abandonment, isolation,  
12 abduction, or other treatment that results in physical harm, pain,  
13 or mental suffering, the deprivation of care by a caregiver, or  
14 other deprivation by a custodian or provider of goods or services  
15 that are necessary to avoid physical harm or mental suffering.

16 (2) “Child abuse” means an act proscribed by Section 273d or  
17 288.5 of the Penal Code.

18 (3) “Domestic violence” has the meaning set forth in Section  
19 13700 of the Penal Code. Subject to a hearing conducted  
20 pursuant to Section 352, which shall include consideration of any  
21 corroboration and remoteness in time, “domestic violence” has  
22 the further meaning as set forth in Section 6211 of the Family  
23 Code, if the act occurred no more than five years before the  
24 charged offense.

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

29 (f) Evidence of the findings and determinations of  
30 administrative agencies regulating the conduct of health facilities  
31 licensed under Section 1250 of the Health and Safety Code is  
32 inadmissible under this section.

33 *SEC. 2. Section 124250 of the Health and Safety Code is*  
34 *amended to read:*

35 124250. (a) The following definitions shall apply for  
36 purposes of this section:

37 (1) “Domestic violence” means the infliction or threat of  
38 physical harm against past or present adult or adolescent female  
39 intimate partners, and shall include physical, sexual, and  
40 psychological abuse against the woman, and is a part of a pattern

1 of assaultive, coercive, and controlling behaviors directed at  
2 achieving compliance from or control over, that woman.

3 (2) “Shelter-based” means an established system of services  
4 where battered women and their children may be provided safe  
5 or confidential emergency housing on a 24-hour basis, including,  
6 but not limited to, hotel or motel arrangements, haven, and safe  
7 houses.

8 (3) “Emergency shelter” means a confidential or safe location  
9 that provides emergency housing on a 24-hour basis for battered  
10 women and their children.

11 (b) The Maternal and Child Health Branch of the State  
12 Department of Health Services shall administer a comprehensive  
13 shelter-based services grant program to battered women’s  
14 shelters pursuant to this section.

15 (c) The Maternal and Child Health Branch shall administer  
16 grants, awarded as the result of a request for application process,  
17 to battered women’s shelters that propose to maintain shelters or  
18 services previously granted funding pursuant to this section, to  
19 expand existing services or create new services, and to establish  
20 new battered women’s shelters to provide services, in any of the  
21 following four areas:

22 (1) Emergency shelter to women and their children escaping  
23 violent family situations.

24 (2) Transitional housing programs to help women and their  
25 children find housing and jobs so that they are not forced to  
26 choose between returning to a violent relationship or becoming  
27 homeless. The programs may offer up to 18 months of housing,  
28 case management, job training and placement, counseling,  
29 support groups, and classes in parenting and family budgeting.

30 (3) Legal and other types of advocacy and representation to  
31 help women and their children pursue the appropriate legal  
32 options.

33 (4) Other support services for battered women and their  
34 children.

35 (d) (1) The Maternal and Child Health Branch of the State  
36 Department of Health Services shall conduct a minimum of one  
37 site visit per grant term to each agency funded to provide  
38 shelter-based services to battered women and their children. The  
39 purpose of the site visit shall be a performance assessment of,  
40 and technical assistance for, each agency visited. The

1 performance assessment shall include, but need not be limited to,  
2 a review of all of the following:

- 3 (A) Progress in meeting program goals and objectives.
- 4 (B) Agency organization and facilities.
- 5 (C) Personnel policies, files, and training.
- 6 (D) Recordkeeping, budgeting, and expenditures.
- 7 (E) Documentation, data collection, and client confidentiality.

8 (2) Subsequent to each site visit conducted under paragraph  
9 (1), the Maternal and Child Health Branch shall provide a written  
10 report to the agency summarizing the agency's performance, any  
11 deficiencies noted, and any corrective action needed.

12 (3) Where an agency receives funding from both the Maternal  
13 and Child Health Branch of the State Department of Health  
14 Services and the Domestic Violence Branch of the Office of  
15 Criminal Justice Planning during any grant cycle, the Maternal  
16 and Child Health Branch and the Domestic Violence Branch  
17 shall, to the extent feasible, coordinate agency site visits and  
18 share performance assessment data with the goal of improving  
19 efficiency, eliminating duplication, and reducing administrative  
20 costs.

21 (e) In implementing the grant program pursuant to this section,  
22 the State Department of Health Services shall consult with an  
23 advisory council that shall remain in existence until January 1,  
24 ~~2006~~ 2010. The council shall be composed of not to exceed 13  
25 voting members and two nonvoting members appointed as  
26 follows:

- 27 (1) Seven members appointed by the Governor.
- 28 (2) Three members appointed by the Speaker of the Assembly.
- 29 (3) Three members appointed by the Senate Committee on  
30 Rules.
- 31 (4) Two nonvoting ex officio members who shall be Members  
32 of the Legislature, one appointed by the Speaker of the Assembly  
33 and one appointed by the Senate Committee on Rules. Any  
34 Member of the Legislature appointed to the council shall meet  
35 with, and participate in the activities of, the council to the extent  
36 that participation is not incompatible with his or her position as a  
37 Member of the Legislature.

38 The membership of the council shall consist of domestic  
39 violence advocates, battered women service providers, and  
40 representatives of women's organizations, law enforcement, and

1 other groups involved with domestic violence. At least one-half  
2 of the council membership shall consist of domestic violence  
3 advocates or battered women service providers from  
4 organizations such as the California Alliance Against Domestic  
5 Violence.

6 It is the intent of the Legislature that the council membership  
7 reflect the ethnic, racial, cultural, and geographic diversity of the  
8 state.

9 (f) The department shall collaborate closely with the council in  
10 the development of funding priorities, the framing of the Request  
11 for Proposals, and the solicitation of proposals.

12 (g) (1) The Maternal and Child Health Branch of the State  
13 Department of Health Services shall administer grants, awarded  
14 as the result of a request for application process, to agencies to  
15 conduct demonstration projects to serve battered women,  
16 including, but not limited to, creative and innovative service  
17 approaches, such as community response teams and pilot projects  
18 to develop new interventions emphasizing prevention and  
19 education, and other support projects identified by the advisory  
20 council.

21 (2) For purposes of this subdivision, “agency” means a state  
22 agency, a local government, a community-based organization, or  
23 a nonprofit organization.

24 (h) It is the intent of the Legislature that services funded by  
25 this program include services in underserved and ethnic and  
26 racial communities. Therefore, the Maternal and Child Health  
27 Branch of the State Department of Health Services shall do all of  
28 the following:

29 (1) Fund shelters pursuant to this section that reflect the  
30 ethnic, racial, economic, cultural, and geographic diversity of the  
31 state.

32 (2) Target geographic areas and ethnic and racial communities  
33 of the state whereby, based on a needs assessment, it is  
34 determined that no shelter-based services exist or that additional  
35 resources are necessary.

36 (i) The director may award additional grants to shelter-based  
37 agencies when it is determined that there exists a critical need for  
38 shelter or shelter-based services.

39 (j) As a condition of receiving funding pursuant to this section,  
40 battered women’s shelters shall do all of the following:

1 (1) Provide matching funds or in-kind contributions equivalent  
2 to not less than 20 percent of the grant they would receive. The  
3 matching funds or in-kind contributions may come from other  
4 governmental or private sources.

5 (2) Ensure that appropriate staff and volunteers having client  
6 contact meet the definition of “domestic violence counselor” as  
7 specified in subdivision (a) of Section 1037.1 of the Evidence  
8 Code. The minimum training specified in paragraph (2) of  
9 subdivision (a) of Section 1037.1 of the Evidence Code shall be  
10 provided to those staff and volunteers who do not meet the  
11 requirements of paragraph (1) of subdivision (a) of Section  
12 1037.1 of the Evidence Code.

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