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AMENDED IN SENATE MAY 31, 2005

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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 child and domestic abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 114, as amended, Cohn. Child and domestic abuse.

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 *and subject to an evidentiary hearing*. 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: 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) *and subject to*  
16 *a hearing conducted pursuant to Section 352, which shall include*  
17 *consideration of any corroboration and remoteness in time*, in a  
18 criminal action in which the defendant is accused of an offense

1 involving child abuse, evidence of the defendant’s commission of  
2 child abuse ~~or domestic violence~~ is not made inadmissible by  
3 Section 1101 if the evidence is not inadmissible pursuant to  
4 Section 352. *Nothing in this paragraph prohibits or limits the*  
5 *admission of evidence pursuant to subdivision (b) of Section*  
6 *1101.*

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

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

15 (d) As used in this section:

16 (1) “Abuse of an elder or dependent person” means physical or  
17 sexual abuse, neglect, financial abuse, abandonment, isolation,  
18 abduction, or other treatment that results in physical harm, pain,  
19 or mental suffering, the deprivation of care by a caregiver, or  
20 other deprivation by a custodian or provider of goods or services  
21 that are necessary to avoid physical harm or mental suffering.

22 (2) “Child abuse” means an act proscribed by Section 273d ~~or~~  
23 ~~288.5~~ of the Penal Code.

24 (3) “Domestic violence” has the meaning set forth in Section  
25 13700 of the Penal Code. Subject to a hearing conducted  
26 pursuant to Section 352, which shall include consideration of any  
27 corroboration and remoteness in time, “domestic violence” has  
28 the further meaning as set forth in Section 6211 of the Family  
29 Code, if the act occurred no more than five years before the  
30 charged offense.

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

35 (f) Evidence of the findings and determinations of  
36 administrative agencies regulating the conduct of health facilities  
37 licensed under Section 1250 of the Health and Safety Code is  
38 inadmissible under this section.

39 SEC. 2. Section 124250 of the Health and Safety Code is  
40 amended to read:

1 124250. (a) The following definitions shall apply for  
2 purposes of this section:

3 (1) “Domestic violence” means the infliction or threat of  
4 physical harm against past or present adult or adolescent female  
5 intimate partners, and shall include physical, sexual, and  
6 psychological abuse against the woman, and is a part of a pattern  
7 of assaultive, coercive, and controlling behaviors directed at  
8 achieving compliance from, or control over, that woman.

9 (2) “Shelter-based” means an established system of services  
10 where battered women and their children may be provided safe  
11 or confidential emergency housing on a 24-hour basis, including,  
12 but not limited to, hotel or motel arrangements, ~~haven~~ *havens*,  
13 and safe houses.

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

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

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

28 (1) Emergency shelter to women and their children escaping  
29 violent family situations.

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

36 (3) Legal and other types of advocacy and representation to  
37 help women and their children pursue the appropriate legal  
38 options.

39 (4) Other support services for battered women and their  
40 children.

1 (d) (1) The Maternal and Child Health Branch of the State  
2 Department of Health Services shall conduct a minimum of one  
3 site visit per grant term to each agency funded to provide  
4 shelter-based services to battered women and their children. The  
5 purpose of the site visit shall be a performance assessment of,  
6 and technical assistance for, each agency visited. The  
7 performance assessment shall include, but need not be limited to,  
8 a review of all of the following:

- 9 (A) Progress in meeting program goals and objectives.
- 10 (B) Agency organization and facilities.
- 11 (C) Personnel policies, files, and training.
- 12 (D) Recordkeeping, budgeting, and expenditures.
- 13 (E) Documentation, data collection, and client confidentiality.

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

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

27 (e) In implementing the grant program pursuant to this section,  
28 the State Department of Health Services shall consult with an  
29 advisory council that shall remain in existence until January 1,  
30 2010. The council shall be composed of not to exceed 13 voting  
31 members and two nonvoting members appointed as follows:

- 32 (1) Seven members appointed by the Governor.
- 33 (2) Three members appointed by the Speaker of the Assembly.
- 34 (3) Three members appointed by the Senate Committee on  
35 Rules.

36 (4) Two nonvoting ex officio members who shall be Members  
37 of the Legislature, one appointed by the Speaker of the Assembly  
38 and one appointed by the Senate Committee on Rules. Any  
39 Member of the Legislature appointed to the council shall meet  
40 with, and participate in the activities of, the council to the extent

1 that participation is not incompatible with his or her position as a  
2 Member of the Legislature.

3 The membership of the council shall consist of domestic  
4 violence advocates, battered women service providers, ~~and~~  
5 representatives of women's organizations, law enforcement, and  
6 other groups involved with domestic violence. At least one-half  
7 of the council membership shall consist of domestic violence  
8 advocates or battered women service providers from  
9 organizations such as the California Alliance Against Domestic  
10 Violence.

11 It is the intent of the Legislature that the council membership  
12 reflect the ethnic, racial, cultural, and geographic diversity of the  
13 state.

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

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

26 (2) For purposes of this subdivision, "agency" means a state  
27 agency, a local government, a community-based organization, or  
28 a nonprofit organization.

29 (h) It is the intent of the Legislature that services funded by  
30 this program include services in underserved and ethnic and  
31 racial communities. Therefore, the Maternal and Child Health  
32 Branch of the State Department of Health Services shall do all of  
33 the following:

34 (1) Fund shelters pursuant to this section that reflect the  
35 ethnic, racial, economic, cultural, and geographic diversity of the  
36 state.

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

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

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

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

10 (2) Ensure that appropriate staff and volunteers having client  
11 contact meet the definition of “domestic violence counselor” as  
12 specified in subdivision (a) of Section 1037.1 of the Evidence  
13 Code. The minimum training specified in paragraph (2) of  
14 subdivision (a) of Section 1037.1 of the Evidence Code shall be  
15 provided to those staff and volunteers who do not meet the  
16 requirements of paragraph (1) of subdivision (a) of Section  
17 1037.1 of the Evidence Code.

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