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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

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 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-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) 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

1 criminal action in which the defendant is accused of an offense
2 involving child abuse, evidence of the defendant’s commission of
3 child abuse is not made inadmissible by Section 1101 if the
4 evidence is not inadmissible pursuant to Section 352. Nothing in
5 this paragraph prohibits or limits the admission of evidence
6 pursuant to subdivision (b) of Section 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 of
23 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, havens, and safe
13 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,
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.~~