

Assembly Bill No. 220

Passed the Assembly August 22, 2005

Chief Clerk of the Assembly

Passed the Senate August 18, 2005

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 women's syndrome at the time the crime was committed.

This bill would change the reference from battered women's 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 women's syndrome.

This bill would change the reference from battered women's syndrome to intimate partner battering.

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

This bill would change the reference to intimate partner battering.

Existing law provides that a court may consider expert testimony about battered women's 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 women's 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 women's syndrome, or if the defendant's parole was granted due to evidence of battered women's syndrome that was presented to the Board of Prison Terms.

This bill would change the reference from battered women's syndrome to intimate partner battering.

The bill would incorporate additional changes to Section 3030 of the Family Code made by this bill and SB 594 to take effect if both bills are chaptered and this bill is chaptered last.

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

SECTION 1. Section 340.3 of the Code of Civil Procedure is amended to read:

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

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

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

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

(B) Following a conviction for murder or attempted murder, the defendant has been paroled based in whole or in part upon evidence presented to the Board of Prison Terms that the defendant committed the crime because he or she was the victim of intimate partner battering.

(C) The defendant was convicted of murder or attempted murder in the second degree in a trial at which substantial

evidence was presented that the person committed the crime because he or she was a victim of intimate partner battering.

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

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

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

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

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

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

SEC. 2. Section 3030 of the Family Code is amended to read:

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

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

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

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

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

(3) Testimony of an expert witness, qualified under Section 1107 of the Evidence Code, that the convicted parent experiences intimate partner battering.

Unless and until a custody or visitation order is issued pursuant to this subdivision, no person shall permit or cause the child to visit or remain in the custody of the convicted parent without the consent of the child's custodian or legal guardian.

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

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

SEC. 2.5. Section 3030 of the Family Code is amended to read:

3030. (a) (1) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or if the person

has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(2) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if anyone residing in the person's household is required, as a result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal Code, unless the court finds there is no significant risk to the child and states its reasons in writing or on the record.

(3) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal Code, shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the party seeking custody or visitation is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal Code.

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

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

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

(2) Credible evidence that the convicted parent was a victim of abuse, as defined in Section 6203, committed by the deceased

parent. That evidence may include, but is not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of domestic abuse.

(3) Testimony of an expert witness, qualified under Section 1107 of the Evidence Code, that the convicted parent experiences intimate partner battering.

Unless and until a custody or visitation order is issued pursuant to this subdivision, no person shall permit or cause the child to visit or remain in the custody of the convicted parent without the consent of the child's custodian or legal guardian.

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

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

SEC. 3. Section 4801 of the Penal Code is amended to read:

4801. (a) The Board of Prison Terms may report to the Governor, from time to time, the names of any and all persons imprisoned in any state prison who, in its judgment, ought to have a commutation of sentence or be pardoned and set at liberty on account of good conduct, or unusual term of sentence, or any other cause, including evidence of intimate partner battering and its effects. For purposes of this section, "intimate partner battering and its effects" may include evidence of the nature and effects of physical, emotional, or mental abuse upon the beliefs, perceptions, or behavior of victims of domestic violence where it appears the criminal behavior was the result of that victimization.

(b) The Board of Prison Terms, in reviewing a prisoner's suitability for parole pursuant to Section 3041.5, shall consider any information or evidence that, at the time of the commission of the crime, the prisoner had experienced intimate partner battering, but was convicted of the offense prior to the enactment of Section 1107 of the Evidence Code by Chapter 812 of the Statutes of 1991. The board shall state on the record the

information or evidence that it considered pursuant to this subdivision, and the reasons for the parole decision. The board shall annually report to the Legislature and the Governor on the cases the board considered pursuant to this subdivision during the previous year, including the board's decision and the findings of its investigations of these cases.

SEC. 4. Section 5075.5 of the Penal Code is amended to read:

5075.5. All commissioners and deputy commissioners who conduct hearings for the purpose of considering the parole suitability of prisoners or the setting of a parole release date for prisoners, shall receive initial training on domestic violence cases and intimate partner battering and its effects.

SEC. 5. Section 13823.93 of the Penal Code is amended to read:

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

(1) "Medical personnel" includes physicians, nurse practitioners, physician assistants, nurses, and other health care providers, as appropriate.

(2) To "perform a medical evidentiary examination" means to evaluate, collect, preserve, and document evidence, interpret findings, and document examination results.

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

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

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

(1) Recognized expertise and experience in providing medical evidentiary examinations for victims of child abuse or neglect,

sexual assault, domestic violence, elder abuse, and abuse or assault perpetrated against persons with disabilities.

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

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

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

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

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

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

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

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

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

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

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

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

(2) Develop a telecommunication system network between the training center and other areas of the state, including rural and midsized counties. This service shall provide case consultation to medical personnel, law enforcement, and the courts and provide continuing medical education.

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

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

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

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

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

(8) Provide training in the dynamics of victimization, including, but not limited to, rape trauma syndrome, intimate partner battering and its effects, the effects of child abuse and neglect, and the various aspects of elder abuse. This training shall

be provided by individuals who are recognized as experts within their respective disciplines.

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

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 3030 of the Family Code proposed by both this bill and SB 594. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 3030 of the Family Code, and (3) this bill is enacted after SB 594, in which case Section 2 of this bill shall not become operative.

Approved _____, 2005

Governor