

AMENDED IN ASSEMBLY JANUARY 4, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 120

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

January 13, 2005

~~An act to add Section 6219.5 to the Family Code, relating to domestic violence. An act to amend Section 1109 of the Evidence Code, relating to evidence.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 120, as amended, Cohn. ~~Domestic violence: children. Evidence: domestic violence.~~

Under existing law, evidence of a person's character or a trait of his or her character is inadmissible when offered to prove his or her conduct on a particular occasion, except as specified. Existing law provides, however, that when a defendant is accused of an offense involving domestic violence in a criminal action, evidence of the defendant's commission of other domestic violence may be admitted to prove the defendant's conduct, except when the court exercises its discretion to exclude the evidence of prior acts, as specified. "Domestic violence" is defined for purposes of these provisions to include abuse perpetrated against specified persons, if the act occurred no more than 5 years before the charged offense.

This bill would revise the definition of "domestic violence" to delete the 5-year limitation on the admissibility of prior acts of domestic violence.

~~Under existing law, any person who perpetrates domestic violence, as defined, is subject to both criminal penalties and civil remedies, as specified.~~

~~This bill would, subject to adequate, discretionary funding from a city or county, authorize the superior court in Santa Clara County to develop a pilot program, and any other county able and willing to participate in that program, to collect data with regard to domestic violence cases and children, as specified. The bill would require superior courts participating in this program to report their findings and recommendations to the Judicial Council on or before December 1, 2006.~~

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) 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
19 involving child abuse, evidence of the defendant's commission of
20 child abuse is not made inadmissible by Section 1101 if the
21 evidence is not inadmissible pursuant to Section 352. Nothing in
22 this paragraph prohibits or limits the admission of evidence
23 pursuant to subdivision (b) of Section 1101.

24 (b) In an action in which evidence is to be offered under this
25 section, the people shall disclose the evidence to the defendant,
26 including statements of witnesses or a summary of the substance

1 of any testimony that is expected to be offered, in compliance
2 with the provisions of Section 1054.7 of the Penal Code.

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

6 (d) As used in this section:

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

13 (2) “Child abuse” means an act proscribed by Section 273d of
14 the Penal Code.

15 (3) “Domestic violence” has the meaning set forth in Section
16 13700 of the Penal Code. Subject to a hearing conducted
17 pursuant to Section 352, which shall include consideration of any
18 corroboration and remoteness in time, “domestic violence” has
19 the further meaning as set forth in Section 6211 of the Family
20 Code, ~~if the act occurred no more than five years before the~~
21 ~~charged offense.~~

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

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

30 ~~SECTION 1. Section 6219.5 is added to the Family Code, to~~
31 ~~read:~~

32 ~~6219.5. (a) Subject to adequate, discretionary funding from a~~
33 ~~city or a county, the superior court in Santa Clara County may~~
34 ~~develop a pilot program to collect data on the following:~~

35 ~~(1) The percentage of domestic violence cases in the civil,~~
36 ~~juvenile, and criminal systems that involve children.~~

37 ~~(2) The age of the children.~~

38 ~~(3) The gender of the children.~~

39 ~~(4) The ethnicity of the children.~~

40 ~~(5) The recidivism rate of perpetrators.~~

1 ~~(6) Visiting arrangements, if any.~~
2 ~~(b) The superior court in any other county that is able and~~
3 ~~willing may also participate in the pilot program. The superior~~
4 ~~courts participating in this pilot program shall report their~~
5 ~~findings and recommendations to the Judicial Council on or~~
6 ~~before December 1, 2006.~~

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