

Assembly Bill No. 882

CHAPTER 439

An act to amend Section 1101 of, and to add Section 1108 to, the Evidence Code, relating to evidence.

[Approved by Governor September 2, 1995. Filed with Secretary of State September 5, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 882, Rogan. Evidence: character traits.

Existing law provides that, except as specified, evidence of a person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion.

This bill would create a further exception to this rule by providing that in a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not inadmissible under the above rule, except as specified. The bill also would require the people to disclose this evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least 30 days before the scheduled date of trial or at such later time as the court may allow for good cause. The bill would define sexual offense for these purposes.

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

SECTION 1. Section 1101 of the Evidence Code is amended to read:

1101. (a) Except as provided in this section and in Sections 1102, 1103, and 1108, evidence of a person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion.

(b) Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or whether a defendant in a prosecution for an unlawful sexual act or attempted unlawful sexual act did not reasonably and in good faith believe that the victim consented) other than his or her disposition to commit such an act.



(c) Nothing in this section affects the admissibility of evidence offered to support or attack the credibility of a witness.

SEC. 2. Section 1108 is added to the Evidence Code, to read:

1108. (a) In a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by Section 1101, if the evidence is not inadmissible pursuant to Section 352.

(b) In an action in which evidence is to be offered under this section, the people shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least 30 days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This section shall not be construed to limit the admission or consideration of evidence under any other section of this code.

(d) As used in this section, the following definitions shall apply:

(1) "Sexual offense" means a crime under the law of a state or of the United States that involved any of the following:

(A) Any conduct proscribed by Section 243.4, 261, 261.5, 262, 264.1, 266c, 286, 288, 288a, 288.2, 288.5, or 289, or subdivision (b), (c), or (d) of Section 311.2 or Section 311.3, 311.4, 311.10, 311.11, 314, or 647.6, of the Penal Code.

(B) Contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person.

(C) Contact, without consent, between the genitals or anus of the defendant and any part of another person's body.

(D) Deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person.

(E) An attempt or conspiracy to engage in conduct described in this paragraph.

(2) "Consent" shall have the same meaning as provided in Section 261.6 of the Penal Code, except that it does not include consent which is legally ineffective because of the age, mental disorder, or developmental or physical disability of the victim.

