

AMENDED IN ASSEMBLY MAY 17, 2021

AMENDED IN ASSEMBLY MARCH 18, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 939

**Introduced by Assembly Member ~~Cervantes~~ *Members Cervantes
and Bauer-Kahan***

***(Coauthors: Assembly Members Aguiar-Curry, Boerner Horvath,
Burke, Calderon, Carrillo, Friedman, Cristina Garcia,
Lorena Gonzalez, Irwin, Low, Petrie-Norris, Quirk-Silva, Reyes,
Luz Rivas, Blanca Rubio, Seyarto, Ward, Akilah Weber, Wicks)***

February 17, 2021

An act to amend Section 1103 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 939, as amended, Cervantes. Sex offenses: evidence.

Existing law prohibits, during the prosecution of specified sex crimes, the admission of evidence of the manner in which the victim was dressed, when offered by either the prosecution or the defendant on the issue of consent, unless the court finds the evidence relevant and admissible in the interests of justice.

This bill would prohibit the court from admitting evidence, in the above circumstances, of the manner in which the victim was dressed, upon a finding that the evidence is relevant and admissible in the interests of justice.

The California Constitution provides that relevant evidence shall not be excluded in any criminal proceeding except as provided by statute enacted by a $\frac{2}{3}$ vote of the membership of each house of the Legislature.

Because this bill would limit the admissibility of evidence in criminal proceedings, it would require a $\frac{2}{3}$ vote.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. This act shall be known, and may be cited, as the
2 Denim Day Act of 2021.

3 SEC. 2. Section 1103 of the Evidence Code is amended to read:
4 1103. (a) In a criminal action, evidence of the character or a
5 trait of character (in the form of an opinion, evidence of reputation,
6 or evidence of specific instances of conduct) of the victim of the
7 crime for which the defendant is being prosecuted is not made
8 inadmissible by Section 1101 if the evidence is:
9 (1) Offered by the defendant to prove conduct of the victim in
10 conformity with the character or trait of character.
11 (2) Offered by the prosecution to rebut evidence adduced by
12 the defendant under paragraph (1).

13 (b) In a criminal action, evidence of the defendant’s character
14 for violence or trait of character for violence (in the form of an
15 opinion, evidence of reputation, or evidence of specific instances
16 of conduct) is not made inadmissible by Section 1101 if the
17 evidence is offered by the prosecution to prove conduct of the
18 defendant in conformity with the character or trait of character and
19 is offered after evidence that the victim had a character for violence
20 or a trait of character tending to show violence has been adduced
21 by the defendant under paragraph (1) of subdivision (a).

22 (c) (1) Notwithstanding any other provision of this code to the
23 contrary, and except as provided in this subdivision, in any
24 prosecution under Section 261, 262, or 264.1 of the Penal Code,
25 or under Section 286, 287, or 289 of, or former Section 288a of,
26 the Penal Code, or for assault with intent to commit, attempt to
27 commit, or conspiracy to commit a crime defined in any of those
28 sections, except where the crime is alleged to have occurred in a
29 local detention facility, as defined in Section 6031.4, or in a state
30 prison, as defined in Section 4504, opinion evidence, reputation
31 evidence, and evidence of specific instances of the complaining
32 witness’ sexual conduct, or any of that evidence, is not admissible

1 by the defendant in order to prove consent by the complaining
2 witness.

3 (2) Notwithstanding paragraph (3), evidence of the manner in
4 which the victim was dressed at the time of the commission of the
5 offense shall not be admissible when offered by either party on
6 the issue of consent in any prosecution for an offense specified in
7 paragraph (1). For the purposes of this paragraph, “manner of
8 dress” does not include the condition of the victim’s clothing
9 before, during, or after the commission of the offense.

10 (3) Paragraph (1) ~~shall not be applicable~~ *does not apply* to
11 evidence of the complaining witness’ sexual conduct with the
12 defendant.

13 (4) If the prosecutor introduces evidence, including testimony
14 of a witness, or the complaining witness as a witness gives
15 testimony, and that evidence or testimony relates to the
16 complaining witness’ sexual conduct, the defendant may
17 cross-examine the witness who gives the testimony and offer
18 relevant evidence limited specifically to the rebuttal of the evidence
19 introduced by the prosecutor or given by the complaining witness.

20 (5) This subdivision shall not be construed to make inadmissible
21 any evidence offered to attack the credibility of the complaining
22 witness as provided in Section 782.

23 (6) As used in this section, “complaining witness” means the
24 alleged victim of the crime charged, the prosecution of which is
25 subject to this subdivision.