

Assembly Bill No. 939

Passed the Assembly September 9, 2021

Chief Clerk of the Assembly

Passed the Senate September 8, 2021

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2021, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 939, Cervantes. Sex offenses: evidence.

(1) 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.

(2) This bill would incorporate additional changes to Section 1103 of the Evidence Code proposed by AB 1171 to be operative only if this bill and AB 1171 are enacted and this bill is enacted last.

(3) 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.

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

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

SEC. 2. Section 1103 of the Evidence Code is amended to read:

1103. (a) In a criminal action, evidence of the character or a trait of character (in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct) of the victim of the crime for which the defendant is being prosecuted is not made inadmissible by Section 1101 if the evidence is:

(1) Offered by the defendant to prove conduct of the victim in conformity with the character or trait of character.

(2) Offered by the prosecution to rebut evidence adduced by the defendant under paragraph (1).

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

(c) (1) Notwithstanding any other provision of this code to the contrary, and except as provided in this subdivision, in any prosecution under Section 261, 262, or 264.1 of the Penal Code, or under Section 286, 287, or 289 of, or former Section 288a of, the Penal Code, or for assault with intent to commit, attempt to commit, or conspiracy to commit a crime defined in any of those sections, except where the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4, or in a state prison, as defined in Section 4504, opinion evidence, reputation evidence, and evidence of specific instances of the complaining witness' sexual conduct, or any of that evidence, is not admissible by the defendant in order to prove consent by the complaining witness.

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

(3) Paragraph (1) does not apply to evidence of the complaining witness' sexual conduct with the defendant.

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

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

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

SEC. 2.1. Section 1103 of the Evidence Code is amended to read:

1103. (a) In a criminal action, evidence of the character or a trait of character (in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct) of the victim of the crime for which the defendant is being prosecuted is not made inadmissible by Section 1101 if the evidence is:

(1) Offered by the defendant to prove conduct of the victim in conformity with the character or trait of character.

(2) Offered by the prosecution to rebut evidence adduced by the defendant under paragraph (1).

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

(c) (1) Notwithstanding any other provision of this code to the contrary, and except as provided in this subdivision, in any prosecution under Section 261 or 264.1 of the Penal Code, or under Section 286, 287, or 289 of, or former Section 288a of, the Penal Code, or for assault with intent to commit, attempt to commit, or conspiracy to commit a crime defined in any of those sections, except where the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4, or in a state prison, as defined in Section 4504, opinion evidence, reputation evidence, and evidence of specific instances of the complaining witness’ sexual conduct, or any of that evidence, is not admissible by the defendant in order to prove consent by the complaining witness.

(2) Notwithstanding paragraph (3), evidence of the manner in which the victim was dressed at the time of the commission of the

offense is not admissible when offered by either party on the issue of consent in any prosecution for an offense specified in paragraph (1). For the purposes of this paragraph, “manner of dress” does not include the condition of the victim’s clothing before, during, or after the commission of the offense.

(3) Paragraph (1) does not apply to evidence of the complaining witness’ sexual conduct with the defendant.

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

(5) This subdivision does not make inadmissible any evidence offered to attack the credibility of the complaining witness as provided in Section 782.

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

SEC. 3. Section 2.1 of this bill incorporates amendments to Section 1103 of the Evidence Code proposed by both this bill and Assembly Bill 1171. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 1103 of the Evidence Code, and (3) this bill is enacted after Assembly Bill 1171, in which case Section 2 of this bill shall not become operative.

Approved _____, 2021

Governor