

- SUBJECT:** Admissible evidence of similar offenses in certain sexual offense cases
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 5 ayes — Peña, Vaught, Riddle, Escobar, Mallory Caraway
- 0 nays
- 4 absent — Hodge, Moreno, Pierson, Talton
- WITNESSES:** For — Sean Colston, Tarrant County Criminal District Attorney’s Office; (*Registered, but did not testify:* Torie Camp, Texas Association Against Sexual Assault; Tom Gaylor, Texas Municipal Police Association; James Jones, Houston Police Dept.; Ana Rodriguez, Texas Council on Family Violence; Ballard Sharpleigh, 34th Judicial District’s District Attorney’s Office)
- Against — David Gonzalez, Texas Criminal Defense Lawyers Association; (*Registered, but did not testify:* Ruth Epstein, ACLU of Texas)
- On — Shannon Edmonds, Texas District and County Attorneys Association; Laura Popp, Office of the Attorney General
- BACKGROUND:** Under the Texas Rules of Evidence, Rule 404, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes if certain conditions are met, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.
- Under Rule 405, in all cases in which a person’s character or character trait is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. In a criminal case, to be qualified to testify at the guilt stage of trial concerning the character or character trait of an accused, a witness must have been familiar with the reputation, or with the underlying facts or information upon which the opinion is based, prior to the day of the offense. In all cases where testimony is admitted under this rule, inquiry on cross-examination is allowable into relevant specific instances of conduct.

Code of Criminal Procedure, art. 38.37, allows evidence of other crimes, wrongs, or acts committed by the defendant against a child under age 17, who is the victim of the alleged offense, to be admitted for its bearing on relevant matters, including the state of mind of the defendant and the child and the previous and subsequent relationships between the defendant and the child. The alleged offense must be either a sexual offense (Penal Code, ch. 21), an assaultive offense (Penal Code, ch. 22), prohibited sexual conduct (Penal Code, sec. 25.01), sexual performance by a child (Penal Code, sec. 43.25), or an attempt or conspiracy to commit one of these offenses.

**DIGEST:**

HB 1264 would amend Code of Criminal Procedure, art. 38.37 to allow the admission of evidence of other similar offenses committed by the defendant in the trial of the alleged offense for any bearing the evidence had on relevant matters, including the character of the defendant and acts performed in conformity with the character of the defendant under certain categories of criminal offenses.

In a trial for sexual assault (Penal Code, sec. 22.011), aggravated sexual assault (Penal Code, sec. 22.021), or an attempt or conspiracy to commit either offense, the following would be admissible:

- evidence that the defendant committed another offense under either section; or
- evidence that the defendant attempted or conspired to commit another offense under either section.

Evidence that the defendant committed, or attempted or conspired to commit, any instance of the following offenses would be admissible in a trial for:

- indecency with a child (Penal Code, sec. 21.11);
- sexual assault of a child (Penal Code secs. 22.021(a)(1)(B) and (2));
- aggravated sexual assault of a child (Penal Code, sec. 33.021);
- online solicitation of a minor (Penal Code, sec. 33.021);
- sexual performance by a child (Penal Code, sec. 43.25);
- possession or promotion of child pornography (Penal Code, sec. 43.25);
- or an attempt or conspiracy to commit any of the above .

The bill would take effect on September 1, 2007, and would apply only to the admissibility of evidence in a criminal proceeding that commenced on or after that date.

**SUPPORTERS  
SAY:**

HB 1264 would protect child victims by expanding the kind of relevant evidence that can be admitted in certain kinds of trials. It can be difficult to prove crimes against children, often because the child victim is the only witness to the crime. Children often make poor witnesses because they are easily distracted and can be intimidated by the trial setting or reluctant to testify against relatives or authority figures. Current law already allows evidence of other crimes, wrongs, or acts committed by the defendant against the child who is the victim of the alleged offense to be admitted for its bearing on the case, and HB 1264 appropriately would extend this principle.

Sexual assault and aggravated sexual assault are closely related crimes, with the latter being a version of the former involving a deadly weapon. The same is true of indecency with a child, sexual assault of a child, aggravated sexual assault of a child, online solicitation of a minor, sexual performance by a child, and possession or promotion of child pornography. Research on sex offenders shows that one of the above crimes easily can lead to another. Thus evidence of one of these crimes is highly relevant to a question concerning another, and they should be admitted as evidence.

**OPPONENTS  
SAY:**

Good rules of evidence and procedure should guarantee all defendants three things: a fair trial, a trial regardless of the alleged crime, and rules that do not change depending on the charge. Rules of evidence and procedure should be designed to ensure that juries only consider quality evidence, not to convict or exonerate defendants. The focus should be the process, not the end result. To do so would be to subvert the integrity and neutrality of the trial process.

HB 1264 would deny defendants accused of certain crimes the protection of a fair trial and selectively change the rules of evidence depending on the charge. The bill would allow admission of evidence regarding a defendant's character, which could distract the jury from the real issue of whether the defendant actually committed the crime in question. Not only is this evidence beside the point, it is propensity evidence used to convince a jury that because a person may have done something in the past, the person necessarily must have done so in this instance as well. The actual

focus of the trial should be the events of the incident in question, not extraneous circumstances. HB 1264 would subvert long standing and traditional interpretations of criminal law concerning character. Current law already allows a great deal of character evidence and needs no expansion.

While crimes committed against children are abhorrent, they still are crimes like any other in that they are violations of societal norms. As such, society should determine the truth or falsity of these accusations using the same methods that would be used in any other criminal case.