

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 152  
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Criminal Justice  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 152 would allow evidence of previous similar sexual offenses to be admitted during a trial for sexual offenses against a child or an adult where the offender is the same, but the victim may be different.

Current Texas law limits admission of evidence of prior bad acts to certain sexually oriented offenses against a child who is also the victim in the alleged offense. The Federal Rules of Evidence, however, allow a defendant's prior commission of another offense or offenses of sexual assault to be admitted into evidence regardless of whether the victim is the same.

S.B. 152 amends Article 38.37, Code of Criminal Procedure, to narrowly permit evidence of certain previous sexually related crimes involving other victims in the prosecution of certain sexual offenses.

In a trial involving an adult victim, S.B. 152 would limit admission of evidence to a previous commission or attempt/conspiracy to commit sexual assault or aggravated sexual assault.

In a trial involving a child victim, a prior commission or attempt/conspiracy to commit would include the following: continuous sexual abuse of a young child, 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, or possession or promotion of child pornography.

S.B. 152 provides greater protection to victims of sexually oriented crimes, brings Texas more in line with the Federal Rules of Evidence to promote greater uniformity, and provides defendants extra protections not available at the federal level.

As proposed, S.B. 152 amends current law relating to the admissibility of evidence of other similar offenses in the prosecution of certain sexual offenses.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 1, 2, and 3, Article 38.37, Code of Criminal Procedure, as follows:

Sec. 1. (a) Creates this subsection from existing text. Provides that Subsection (b), rather than this article, applies to a proceeding in the prosecution of a defendant for an offense under the following provisions of the Penal Code, if committed against a child under 17 years of age:

- (1) Chapter 21 (Sexual Offenses);
- (2) Chapter 22 (Assaultive Offenses);

(3) Section 25.02 (Prohibited Sexual Conduct);

(4) Section 43.25 (Sexual Performance by a Child); or

(5) an attempt or conspiracy to commit an offense listed in this subsection, rather than section.

(b) Redesignates existing Section 2 as Subsection (b). Makes no further changes.

Sec. 2. Requires that evidence of other similar offenses committed by the defendant, notwithstanding Rules 404 (Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes) and 405 (Methods of Proving Character), Texas Rules of Evidence, be admitted in the trial of the alleged offense for any bearing the evidence has on relevant matters, including the character of the defendant and acts performed in conformity with the character of the defendant, as follows:

(1) in the trial of an offense under Sections 22.011 (Sexual Assault) or 22.021 (Aggravated Sexual Assault), Penal Code, or an attempt or conspiracy to commit an offense under either of those sections, evidence of:

(A) the commission of another offense under either of those sections; or

(B) an attempt or conspiracy to commit an offense under either of those sections; and

(2) in the trial of an offense under Sections 21.02 (Continuous Sexual Abuse of Young Child or Children), 21.11 (Indecency With a Child), 22.011(a)(2) (Sexual Assault of a Child), 22.021(a)(1)(B) and (2) (Aggravated Sexual Assault of a Child), 33.021 (Online Solicitation of a Minor), 43.25 (Sexual Performance by a Child), or 43.26 (Possession or Promotion of Child Pornography), Penal Code, or an attempt or conspiracy to commit an offense under any of those sections, evidence of:

(A) the commission of another offense under any of those sections; or

(B) an attempt or conspiracy to commit an offense under any of those sections.

Sec. 3. Requires the state, on timely request from the defendant, to give the defendant notice of the state's intent to introduce in the case in chief evidence described by Section 1 or 2 in the same manner as the state is required to give notice under Rule 404(b) (Other Crimes, Wrongs or Acts), Texas Rules of Evidence.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2011.