

BILL ANALYSIS

Senate Research Center
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S.B. 12
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Because of the nature of child sex offenses, there is typically very little evidence to assist prosecutors with proving their cases. Victims, especially children, are many times so scarred by the physical and emotional trauma of the event that there are often long delays in the reporting of the crime, and these delays can lead to the destruction or deterioration of what little physical evidence exists. As a result, the primary piece of evidence in most child sexual abuse cases is a traumatized child.

Currently, the Texas Rules of Evidence allow evidence related to prior offenses to be admitted at trial only when the victim is under 17 years of age and was also the victim in the previous offense. Coupled with the existing evidentiary challenges, this rule makes convicting child sex offenders even more difficult.

S.B. 12 will bring the Texas Rules of Evidence closer to the Federal Rules of Evidence, specifically Federal Rule 413(a), which allows evidence of previous sexual assault cases to be admitted at trial. Although the Federal Rules of Evidence allow prior offense evidence to be admitted in sexual assault cases involving both adults and children, S.B. 12 limits the Texas rule to sexual offenses committed against a minor.

Additionally, the changes proposed in S.B. 12 will leave Texas with more defendant protections than the Federal Rules of Evidence by stating that the previous offenses must be similar in nature and by specifically prescribing a list of similar offenses. The list of similar acts include: Continuous Sexual Abuse of a 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, Possession or Promotion of Child Pornography, or Sex Trafficking of a Child.

Evidence of prior, similar offenses against other victims will provide prosecutors with a much needed tool to assist them in showing a defendant's propensity for committing these types of crimes. This, in conjunction with the evidence presented in the current case, may help to prove beyond a reasonable doubt in a juror's mind that the defendant is in fact guilty.

As proposed, S.B. 12 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 Article 38.37, Code of Criminal Procedure, by amending Sections 1, 2, and 3 and adding Section 2-a, 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, or an attempt or conspiracy to commit an offense, under certain provisions of the Penal Code.

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

Sec. 2. (a) Provides that Subsection (b) applies only to the trial of a defendant for:

(1) an offense under certain provisions of the Penal Code; or

(2) an attempt or conspiracy to commit an offense described by Subdivision (1).

(b) Authorizes the admission of evidence, notwithstanding Rules 404 and 405, Texas Rules of Evidence, and subject to Section 2-a, that the defendant has committed a separate offense, described by Subsection (a)(1) or (2), in the trial of an alleged offense described by Subsection (a)(1) or (2) 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.

Sec. 2-a. Requires the trial judge, before evidence described by Section 2 may be introduced, to determine that the evidence likely to be admitted at trial will be adequate to support a finding by the jury that the defendant committed the separate offense beyond reasonable doubt and conduct a hearing out of presence of the jury for that purpose.

Sec. 3. Requires the state to give the defendant notice of the state's intent to introduce in the case in chief evidence described by Section 1 or 2, not later than the 30th day before the date of the defendant's trial, rather than requires the state, on timely request by the defendant, to give the defendant notice of the state's intent to introduce in the case in chief evidence described by Section 2 in the same manner as the state is required to give notice under Rule 404(b), Texas Rules of Evidence.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2013.