

By: Wise

H.B. No. 69

A BILL TO BE ENTITLED

AN ACT

relating to the admissibility of testimony in civil and criminal proceedings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 18, Civil Practice and Remedies Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. HEARSAY

Sec. 18.091. CERTAIN STATEMENTS BY CHILDREN. In any civil judicial proceeding, a court may admit a statement made out of court that is not otherwise admissible under any exception to the rule against hearsay if:

(1) the statement is made by a child younger than 16 years of age at the time of making the statement;

(2) the statement describes any sexual act or sexual contact performed on, with, or by the child in violation of a state law; and

(3) the court finds that it is in the interests of justice to admit the statement.

Sec. 18.092. RESIDUAL HEARSAY EVIDENCE EXCEPTION. (a) In any civil judicial proceeding, a court may admit a statement made out of court that is not otherwise admissible under any exception to the rule against hearsay if the court finds:

(1) the statement has circumstantial guarantees of trustworthiness equivalent to statements that are admissible under

1 a specific exception to the rule against hearsay;

2 (2) the statement is offered as evidence of a material
3 fact;

4 (3) the statement is more probative on the point for
5 which it is offered than any other evidence that the party offering
6 the statement can procure through reasonable efforts;

7 (4) it is in the interests of justice to admit the
8 statement; and

9 (5) the party offering the statement has complied with
10 Subsection (b).

11 (b) A party offering a statement for admission under this
12 section must make the party's intention to offer the statement
13 known, including the particulars of the statement and the name and
14 address of the person who made the statement, to the other parties
15 in the proceeding sufficiently in advance of the statement's use in
16 the proceeding to allow the other parties a fair opportunity to
17 prepare to meet it.

18 Sec. 18.093. CONFLICT WITH RULES. Notwithstanding Section
19 22.004, Government Code, the supreme court may not amend or adopt
20 rules in conflict with this subchapter.

21 SECTION 2. Section 1, Article 38.071, Code of Criminal
22 Procedure, is amended to read as follows:

23 Sec. 1. This article applies only to a proceeding in the
24 prosecution of an offense defined by any of the following sections
25 of the Penal Code if the offense is alleged to have been committed
26 against a child 16 [~~12~~] years of age or younger and who, at the time
27 of giving testimony concerning the offense in the manner provided

1 by this article, is 16 years of age or younger, and if the trial
2 court finds that the child is unavailable to testify at the trial of
3 the offense, and applies only to the statements or testimony of that
4 child:

- 5 (1) Section 21.11 (Indecency with a Child);
- 6 (2) Section 22.011 (Sexual Assault);
- 7 (3) Section 22.02 (Aggravated Assault);
- 8 (4) Section 22.021 (Aggravated Sexual Assault);
- 9 (5) Section 22.04(e) (Injury to a Child, Elderly
10 Individual, or Disabled Individual);
- 11 (6) Section 22.04(f) (Injury to a Child, Elderly
12 Individual, or Disabled Individual), if the conduct is committed
13 intentionally or knowingly;
- 14 (7) Section 25.02 (Prohibited Sexual Conduct); or
- 15 (8) Section 43.25 (Sexual Performance by a Child).

16 SECTION 3. Section 1, Article 38.072, Code of Criminal
17 Procedure, is amended to read as follows:

18 Sec. 1. This article applies to a proceeding in the
19 prosecution of an offense under any of the following provisions of
20 the Penal Code, if committed against a child 16 [~~12~~] years of age or
21 younger and who, at the time of making a statement describing the
22 alleged offense, is 16 years of age or younger:

- 23 (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive
24 Offenses);
- 25 (2) Section 25.02 (Prohibited Sexual Conduct); or
- 26 (3) Section 43.25 (Sexual Performance by a Child).

27 SECTION 4. This Act takes effect September 1, 2003, and

1 applies to the admissibility of testimony on or after the effective
2 date of this Act, without regard to whether the proceeding in which
3 the testimony is sought to be admitted commenced before, on, or
4 after that date.