

By: Pena

H.B. No. 149

A BILL TO BE ENTITLED

AN ACT

relating to the admissibility of evidence of an alleged victim's past sexual behavior or alleged sexual predisposition.

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

SECTION 1. Subchapter C, Chapter 18, Civil Practice and Remedies Code, is amended by adding Section 18.062 to read as follows:

Sec. 18.062. EVIDENCE OF ALLEGED VICTIM'S PAST SEXUAL BEHAVIOR OR ALLEGED SEXUAL PREDISPOSITION. (a) Except as provided by Subsections (b) and (c), the following is not admissible in any civil suit involving alleged sexual misconduct:

(1) evidence offered to prove that an alleged victim engaged in other sexual behavior; and

(2) evidence offered to prove an alleged victim's sexual predisposition.

(b) Evidence offered to prove the sexual behavior or sexual predisposition of an alleged victim is admissible if:

(1) it is otherwise admissible under the Texas Rules of Evidence; and

(2) its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party.

(c) Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.

1        (d) A party intending to offer evidence under Subsection (b)  
2 or (c) must:

3            (1) file a written motion on or before the 14th day  
4 before the date the trial begins specifically describing the  
5 evidence and stating the purpose for which it is offered unless the  
6 court for good cause requires a different time for filing or permits  
7 filing during trial; and

8            (2) serve the motion on all parties and notify the  
9 alleged victim or, when appropriate, the alleged victim's guardian  
10 or representative.

11        (e) Before admitting evidence under this section, the court  
12 must conduct a hearing in camera and afford the victim and parties a  
13 right to attend and be heard. The motion, related papers, and the  
14 record of the hearing must be sealed and remain under seal unless  
15 the court orders otherwise.

16        (f) Notwithstanding Section 22.004, Government Code, the  
17 supreme court may not amend or adopt rules in conflict with this  
18 section.

19        SECTION 2. Chapter 38, Code of Criminal Procedure, is  
20 amended by adding Article 38.20 to read as follows:

21        Art. 38.20. EVIDENCE OF ALLEGED VICTIM'S PAST SEXUAL  
22 BEHAVIOR OR ALLEGED SEXUAL PREDISPOSITION. (a) Except as provided  
23 by Subsection (b), the following is not admissible in any criminal  
24 proceeding involving alleged sexual misconduct:

25            (1) evidence offered to prove that an alleged victim  
26 engaged in other sexual behavior; and

27            (2) evidence offered to prove an alleged victim's

1 sexual predisposition.

2 (b) The following is admissible if otherwise admissible  
3 under the Texas Rules of Evidence:

4 (1) evidence of specific instances of sexual behavior  
5 by the alleged victim offered to prove that a person other than the  
6 accused was the source of semen, injury, or other physical  
7 evidence;

8 (2) evidence of specific instances of sexual behavior  
9 by the alleged victim with respect to the person accused of the  
10 sexual misconduct offered by the accused to prove consent or by the  
11 prosecution; and

12 (3) evidence the exclusion of which would violate the  
13 constitutional rights of the defendant.

14 (c) A party intending to offer evidence under Subsection (b)  
15 must:

16 (1) file a written motion on or before the 14th day  
17 before the date the trial begins specifically describing the  
18 evidence and stating the purpose for which it is offered unless the  
19 court for good cause requires a different time for filing or permits  
20 filing during trial; and

21 (2) serve the motion on all parties and notify the  
22 alleged victim or, when appropriate, the alleged victim's guardian  
23 or representative.

24 (d) Before admitting evidence under this article, the court  
25 must conduct a hearing in camera and afford the victim and parties a  
26 right to attend and be heard. The motion, related papers, and the  
27 record of the hearing must be sealed and remain under seal unless

1 the court orders otherwise.

2 (e) Notwithstanding Section 22.109, Government Code, the  
3 court of criminal appeals may not amend or adopt rules in conflict  
4 with this article.

5 SECTION 3. This Act applies only to a proceeding that begins  
6 on or after October 1, 2005. A proceeding that begins before  
7 October 1, 2005, is governed by the law applicable to the proceeding  
8 immediately before October 1, 2005, and that law is continued in  
9 effect for that purpose.

10 SECTION 4. This Act takes effect September 1, 2005.