

By: Allen of Dallas

H.B. No. 1367

A BILL TO BE ENTITLED

AN ACT

relating to the admissibility of evidence of other similar offenses  
in the prosecution of certain sexual offenses.

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

SECTION 1. Article 38.37, Code of Criminal Procedure, is  
amended to read as follows:

Art. 38.37. EVIDENCE OF EXTRANEOUS OFFENSES OR ACTS

Sec. 1. (a) Subsection (b) of this section ~~[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 section.

(b) ~~[Sec. 2.]~~ Notwithstanding Rules 404 and 405, Texas  
Rules of ~~[Criminal]~~ Evidence, evidence of other crimes, wrongs, or  
acts committed by the defendant against the child who is the victim  
of the alleged offense shall be admitted for its bearing on relevant  
matters, including:

- (1) the state of mind of the defendant and the child;
- and

1           (2) the previous and subsequent relationship between  
2 the defendant and the child.

3           Sec. 2. Notwithstanding Rules 404 and 405, Texas Rules of  
4 Evidence, evidence of other similar offenses committed by the  
5 defendant shall be admitted in the trial of the alleged offense for  
6 any bearing the evidence has on relevant matters, including the  
7 character of the defendant and acts performed in conformity with  
8 the character of the defendant, as follows:

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

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

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

17           (2) in the trial of an offense under Section 21.11  
18 (Indecency with a Child), 22.011(a)(2) (Sexual Assault of a Child),  
19 22.021(a)(1)(B) and (2) (Aggravated Sexual Assault of a Child),  
20 43.25 (Sexual Performance by a Child), or 43.26 (Possession or  
21 Promotion of Child Pornography), Penal Code, or an attempt or  
22 conspiracy to commit an offense under any of those sections,  
23 evidence of:

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

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

1           Sec. 3. On timely request by the defendant, the state shall  
2 give the defendant notice of the state's intent to introduce in the  
3 case in chief evidence described by Section 1 or 2 in the same  
4 manner as the state is required to give notice under Rule 404(b),  
5 Texas Rules of [~~Criminal~~] Evidence.

6           Sec. 4. This article does not limit the admissibility of  
7 evidence of extraneous crimes, wrongs, or acts under any other  
8 applicable law.

9           SECTION 2. The change in law made by this Act applies to the  
10 admissibility of evidence in a criminal proceeding that commences  
11 on or after the effective date of this Act. The admissibility of  
12 evidence in a criminal proceeding that commences before the  
13 effective date of this Act is covered by the law in effect when the  
14 proceeding commenced, and the former law is continued in effect for  
15 this purpose.

16           SECTION 3. This Act takes effect September 1, 2005.