

By: Riddle

H.B. No. 1035

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the admissibility of certain hearsay statements made by
3 a victim of abuse who is a child or a disabled individual.

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

5 SECTION 1. The heading to Article 38.072, Code of Criminal
6 Procedure, is amended to read as follows:

7 Art. 38.072. HEARSAY STATEMENTS OF CERTAIN VICTIMS
8 [~~STATEMENT OF CHILD ABUSE VICTIM~~].

9 SECTION 2. Section 1, Article 38.072, Code of Criminal
10 Procedure, is amended to read as follows:

11 Sec. 1. This article applies to a proceeding in the
12 prosecution of an offense under any of the following provisions of
13 the Penal Code, if committed against a child [~~12 years of age or~~]
14 younger than 14 years of age or a disabled individual:

15 (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive
16 Offenses);

17 (2) Section 25.02 (Prohibited Sexual Conduct); ~~or~~

18 (3) Section 43.25 (Sexual Performance by a Child); or

19 (4) Section 15.01 (Criminal Attempt), if the offense
20 attempted is described by Subdivision (1), (2), or (3) of this
21 section.

22 SECTION 3. Section 2(a), Article 38.072, Code of Criminal
23 Procedure, is amended to read as follows:

24 (a) This article applies only to statements that:

1 (1) describe:
2 (A) the alleged offense; or
3 (B) a crime, wrong, or act other than the alleged
4 offense that is:

5 (i) described by Section 1;
6 (ii) allegedly committed by the defendant
7 against, as applicable:

8 (a) the child who is the victim of the
9 offense or another child younger than 14 years of age; or

10 (b) a disabled individual; and

11 (iii) otherwise admissible as evidence
12 under Article 38.37, Rule 404 or 405, Texas Rules of Evidence, or
13 another law or rule of evidence of this state;

14 (2) [~~(1)~~] were made by the child or disabled
15 individual against whom the charged offense or extraneous crime,
16 wrong, or act was allegedly committed; and

17 (3) [~~(2)~~] were made to the first person, 18 years of
18 age or older, other than the defendant, to whom the child or
19 disabled individual made a statement about the offense or
20 extraneous crime, wrong, or act.

21 SECTION 4. Article 38.072, Code of Criminal Procedure, is
22 amended by adding Section 3 to read as follows:

23 Sec. 3. In this article, "disabled individual" has the
24 meaning assigned by Section 22.04, Penal Code.

25 SECTION 5. Section 54.031, Family Code, is amended to read
26 as follows:

27 Sec. 54.031. HEARSAY STATEMENT OF CERTAIN [~~CHILD~~] ABUSE

1 VICTIMS [~~VICTIM~~]. (a) This section applies to a hearing under this
2 title in which a child is alleged to be a delinquent child on the
3 basis of a violation of any of the following provisions of the Penal
4 Code, if a child or disabled individual [~~12 years of age or younger~~]
5 is the alleged victim of the violation:

6 (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive
7 Offenses);

8 (2) Section 25.02 (Prohibited Sexual Conduct); or

9 (3) Section 43.25 (Sexual Performance by a Child).

10 (b) This section applies only to statements that describe
11 the alleged violation that:

12 (1) were made by the child or disabled individual who
13 is the alleged victim of the violation; and

14 (2) were made to the first person, 18 years of age or
15 older, to whom the child or disabled individual made a statement
16 about the violation.

17 (c) A statement that meets the requirements of Subsection
18 (b) of this section is not inadmissible because of the hearsay rule
19 if:

20 (1) on or before the 14th day before the date the
21 hearing begins, the party intending to offer the statement:

22 (A) notifies each other party of its intention to
23 do so;

24 (B) provides each other party with the name of
25 the witness through whom it intends to offer the statement; and

26 (C) provides each other party with a written
27 summary of the statement;

1 (2) the juvenile court finds, in a hearing conducted
2 outside the presence of the jury, that the statement is reliable
3 based on the time, content, and circumstances of the statement; and

4 (3) the child or disabled individual who is the
5 alleged victim testifies or is available to testify at the hearing
6 in court or in any other manner provided by law.

7 (d) Notwithstanding Section 51.02, in this section, "child"
8 and "disabled individual" have the meanings assigned by Section
9 22.04, Penal Code.

10 SECTION 6. The change in law made by this Act applies only
11 to a proceeding that commences on or after the effective date of
12 this Act. A proceeding that commences before the effective date of
13 this Act is governed by the law in effect when the proceeding
14 commenced, and the former law is continued in effect for that
15 purpose.

16 SECTION 7. This Act takes effect September 1, 2007.