

By: Huffman, et al.

S.B. No. 152

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 by amending Sections 1, 2, and 3 and adding Section 2-a to  
read as follows:

Sec. 1. (a) Subsection (b) [~~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 subsection [~~section~~].

(b) [~~Sec. 2.~~] Notwithstanding Rules 404 and 405, Texas  
Rules of 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 may 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: in the trial of an  
9 offense under Section 20A.02 that is punishable as a felony of the  
10 first degree under Section 20A.02(b)(1) (Sex Trafficking of a  
11 Child), Section 21.02 (Continuous Sexual Abuse of Young Child or  
12 Children), Section 21.11 (Indecency With a Child), Section  
13 22.011(a)(2) (Sexual Assault of a Child), Section 22.021(a)(1)(B)  
14 and (2) (Aggravated Sexual Assault of a Child), Section 33.021  
15 (Online Solicitation of a Minor), Section 43.25 (Sexual Performance  
16 by a Child), or Section 43.26 (Possession or Promotion of Child  
17 Pornography), Penal Code, or an attempt or conspiracy to commit an  
18 offense under any of those sections, evidence of:

19                   (A) the commission of another offense under any  
20 of those sections; or

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

23           Sec. 2-a. Before evidence may be introduced described by  
24 Section 2:

25                   (1) a hearing shall be conducted out of the presence of  
26 the jury; and

27                   (2) the trial judge should only admit evidence of a

1 similar offense subject to the introduction of enough evidence to  
2 support a finding that the similar offense has been proved beyond a  
3 reasonable doubt.

4       Sec. 3. The [~~On timely request by the defendant, the~~] state  
5 shall give the defendant notice of the state's intent to introduce  
6 in the case in chief evidence described by Section 1 or 2 not later  
7 than the 30th day before the date of the defendant's trial [~~in the~~  
8 ~~same manner as the state is required to give notice under Rule~~  
9 ~~404(b), Texas Rules of Evidence~~].

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

17       SECTION 3. This Act takes effect September 1, 2011.