

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, or an attempt or conspiracy to commit an offense, under the following provisions of the Penal Code:

(1) if committed against a child under 17 years of age:

(A) Chapter 21 (Sexual Offenses);

(B) Chapter 22 (Assaultive Offenses); or

(C) Section 25.02 (Prohibited Sexual Conduct);

or

(2) if committed against a person younger than 18 years of age:

(A) Section 43.25 (Sexual Performance by a Child);

(B) Section 20A.02(a)(7) or (8); or

(C) Section 43.05(a)(2) (Compelling Prostitution).

(b) [~~Sec. 2.~~] Notwithstanding Rules 404 and 405, Texas

1 Rules of Evidence, evidence of other crimes, wrongs, or acts  
2 committed by the defendant against the child who is the victim of  
3 the alleged offense shall be admitted for its bearing on relevant  
4 matters, including:

5 (1) the state of mind of the defendant and the child;  
6 and

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

9 Sec. 2. (a) Subsection (b) applies only to the trial of a  
10 defendant for:

11 (1) an offense under any of the following provisions  
12 of the Penal Code:

13 (A) Section 20A.02, if punishable as a felony of  
14 the first degree under Section 20A.02(b)(1) (Sex Trafficking of a  
15 Child);

16 (B) Section 21.02 (Continuous Sexual Abuse of  
17 Young Child or Children);

18 (C) Section 21.11 (Indecency With a Child);

19 (D) Section 22.011(a)(2) (Sexual Assault of a  
20 Child);

21 (E) Sections 22.021(a)(1)(B) and (2) (Aggravated  
22 Sexual Assault of a Child);

23 (F) Section 33.021 (Online Solicitation of a  
24 Minor);

25 (G) Section 43.25 (Sexual Performance by a  
26 Child); or

27 (H) Section 43.26 (Possession or Promotion of

1 Child Pornography), Penal Code; or

2 (2) an attempt or conspiracy to commit an offense  
3 described by Subdivision (1).

4 (b) Notwithstanding Rules 404 and 405, Texas Rules of  
5 Evidence, and subject to Section 2-a, evidence that the defendant  
6 has committed a separate offense described by Subsection (a)(1) or  
7 (2) may be admitted in the trial of an alleged offense described by  
8 Subsection (a)(1) or (2) for any bearing the evidence has on  
9 relevant matters, including the character of the defendant and acts  
10 performed in conformity with the character of the defendant.

11 Sec. 2-a. Before evidence described by Section 2 may be  
12 introduced, the trial judge must:

13 (1) determine that the evidence likely to be admitted  
14 at trial will be adequate to support a finding by the jury that the  
15 defendant committed the separate offense beyond a reasonable doubt;  
16 and

17 (2) conduct a hearing out of the presence of the jury  
18 for that purpose.

19 Sec. 3. The [On timely request by the defendant, the] state  
20 shall give the defendant notice of the state's intent to introduce  
21 in the case in chief evidence described by Section 1 or 2 not later  
22 than the 30th day before the date of the defendant's trial [in the  
23 same manner as the state is required to give notice under Rule  
24 404(b), Texas Rules of Evidence].

25 SECTION 2. The change in law made by this Act applies to the  
26 admissibility of evidence in a criminal proceeding that commences  
27 on or after the effective date of this Act. The admissibility of

1 evidence in a criminal proceeding that commences before the  
2 effective date of this Act is covered by the law in effect when the  
3 proceeding commenced, and the former law is continued in effect for  
4 that purpose.

5 SECTION 3. This Act takes effect September 1, 2013.

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President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 12 passed the Senate on  
March 26, 2013, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 12 passed the House on  
May 17, 2013, by the following vote: Yeas 135, Nays 4, two  
present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor