

BILL ANALYSIS

S.B. 535
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current criminal law provides protections for victims of sexual assault through Rule 412 of the Texas Rules of Evidence, commonly known as the rape shield law. This rule generally prohibits the introduction of evidence regarding a victim's past sexual behavior or reputation, thereby shielding victims from prejudicial and irrelevant inquiries during trial proceedings. However, the scope of Rule 412 is currently limited by Texas' statutes and does not apply to victims of human trafficking or child-specific sex offenses such as continuous sexual abuse of a child or indecency with a child. The bill sponsor has informed the committee that this narrow application creates a gap in victim protection during prosecutions of other serious sex crimes. Without broader coverage afforded by the bill, victims of these offenses may be subject to invasive, irrelevant questioning that could retraumatize them and undermine the prosecution's case. S.B. 535 seeks to strengthen Texas' rape shield protections to address this issue by expanding the scope of the applicable state law to include a wider range of sex crimes that Rule 412 encompasses, aligning legal protections across the spectrum of sexual offenses and reinforcing the commitment to victim dignity and trial fairness.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 535 amends the Code of Criminal Procedure to establish that, in the prosecution of the following offenses, or for an attempt or conspiracy to commit any such offense, reputation or opinion evidence of a victim's past sexual behavior and evidence of a specific instance of a victim's past sexual behavior is not admissible:

- certain specified trafficking of persons offenses that involve a sexual aspect;
- continuous trafficking of persons, if the offense is based partly or wholly on conduct that constitutes the trafficking of persons offenses that involve a sexual aspect;
- continuous sexual abuse of young child or disabled individual;
- indecency with a child;
- sexual assault;
- indecent assault; or
- aggravated sexual assault.

The bill specifies that a "victim" includes the victim of an extraneous offense or act with respect to which evidence is introduced during the prosecution of any such offense.

S.B. 535 prohibits a defendant from offering evidence of a specific instance of a victim's past sexual behavior unless the court does the following:

- on a motion by the defendant made outside the presence of the jury, conducts an in camera examination of the evidence in the presence of the court reporter; and
- determines that the probative value of the evidence outweighs the danger of unfair prejudice to the victim and that the evidence:
 - is necessary to rebut or explain scientific or medical evidence offered by the state representing attorney;
 - concerns past sexual behavior with the defendant and is offered by the defendant to prove consent, if the lack of consent is an element of the offense;
 - relates to the victim's motive or bias;
 - is admissible under Rule 609, Texas Rules of Evidence; or
 - is constitutionally required to be admitted.

The bill requires the court to seal the record of the in camera examination conducted and preserve the examination record as part of the record in the case.

S.B. 535 establishes that, under the terms provided by statutory provisions relating to rules of evidence in criminal cases, Rule 412, Texas Rules of Evidence, is disapproved.

S.B. 535 applies to the admissibility of evidence in a criminal proceeding that commences on or after the bill's effective date. The admissibility of evidence in a criminal proceeding that commences before that date is governed by the law in effect on the date the proceeding commenced, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2025.