

BILL ANALYSIS

Senate Research Center
89R8979 EAS-F

C.S.S.B. 535
By: Huffman
Criminal Justice
3/18/2025
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas Rule of Evidence 412, the state's rape shield law, protects victims of sexual assault and aggravated sexual assault by generally excluding evidence of their past sexual behavior or reputation. However, these protections do not extend to victims of human trafficking or child-specific sex crimes like continuous sexual abuse and indecency. The committee substitute to S.B. 535 addresses this gap by expanding the law to cover victims of human trafficking and child-specific sexual offenses.

The committee substitute clarifies that reputation and opinion evidence is always inadmissible. However, specific instances of a victim's past sexual behavior may be admissible in cases where lack of consent is an element of the offense.

C.S.S.B. 535 amends current law relating to the admissibility of evidence regarding a victim's past sexual behavior in prosecutions of certain trafficking, sexual, or assaultive offenses.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 38, Code of Criminal Procedure, by adding Article 38.372, as follows:

Art. 38.372. EVIDENCE OF VICTIM'S PAST SEXUAL BEHAVIOR. (a) Defines "victim."

(b) Provides that this article applies to a proceeding in the prosecution of a defendant for an offense, or for an attempt or conspiracy to commit an offense, under certain provisions of the Penal Code.

(c) Provides that, in the prosecution of an offense described by Subsection (b), reputation or opinion evidence of a victim's past sexual behavior is not admissible.

(d) Provides that, except as provided by Subsection (e), in the prosecution of an offense described by Subsection (b), evidence of a specific instance of a victim's past sexual behavior is not admissible.

(e) Prohibits a defendant from offering evidence of a victim's past sexual behavior or specific instances of a victim's past sexual behavior unless the court:

(1) 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

(2) 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 attorney representing the state; 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.

(f) Requires the court to seal the record of the in camera examination conducted under Subsection (e)(1) and preserve the examination record as part of the record in the case.

SECTION 2. Provides that, under the terms of Section 22.109(b) (relating to authorizing the court of criminal appeals to promulgate a comprehensive body of rules of evidence in the trials of criminal cases and from time to time to promulgate certain rules with certain requirements), Government Code, Rule 412, Texas Rules of Evidence, is disapproved.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2025.