

By: Huffman
(Capriglione)

S.B. No. 535

A BILL TO BE ENTITLED

AN ACT

relating to the admissibility of evidence regarding a victim's past sexual behavior in prosecutions of certain trafficking, sexual, or assaultive offenses.

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

SECTION 1. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.372 to read as follows:

Art. 38.372. EVIDENCE OF VICTIM'S PAST SEXUAL BEHAVIOR.

(a) In this article, "victim" includes the victim of an extraneous offense or act with respect to which evidence is introduced during the prosecution of an offense described by Subsection (b).

(b) 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 any of the following provisions of the Penal Code:

(1) Section 20A.02(a)(3), (4), (7), or (8) (Trafficking of Persons);

(2) Section 20A.03 (Continuous Trafficking of Persons), if the offense is based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8);

(3) Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual);

(4) Section 21.11 (Indecency with a Child);

1 (5) Section 22.011 (Sexual Assault);

2 (6) Section 22.012 (Indecent Assault); or

3 (7) Section 22.021 (Aggravated Sexual Assault).

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

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

10 (e) A defendant may not offer evidence of a specific
11 instance of a victim's past sexual behavior unless the court:

12 (1) on a motion by the defendant made outside the
13 presence of the jury, conducts an in camera examination of the
14 evidence in the presence of the court reporter; and

15 (2) determines that the probative value of the
16 evidence outweighs the danger of unfair prejudice to the victim and
17 that the evidence:

18 (A) is necessary to rebut or explain scientific
19 or medical evidence offered by the attorney representing the state;

20 (B) concerns past sexual behavior with the
21 defendant and is offered by the defendant to prove consent, if the
22 lack of consent is an element of the offense;

23 (C) relates to the victim's motive or bias;

24 (D) is admissible under Rule 609, Texas Rules of
25 Evidence; or

26 (E) is constitutionally required to be admitted.

27 (f) The court shall seal the record of the in camera

1 examination conducted under Subsection (e)(1) and preserve the
2 examination record as part of the record in the case.

3 SECTION 2. Under the terms of Section 22.109(b), Government
4 Code, Rule 412, Texas Rules of Evidence, is disapproved.

5 SECTION 3. The change in law made by this Act applies to the
6 admissibility of evidence in a criminal proceeding that commences
7 on or after the effective date of this Act. The admissibility of
8 evidence in a criminal proceeding that commences before the
9 effective date of this Act is governed by the law in effect on the
10 date the proceeding commenced, and the former law is continued in
11 effect for that purpose.

12 SECTION 4. This Act takes effect September 1, 2025.