

BILL ANALYSIS

Senate Research Center

S.B. 2136
By: Powell
Criminal Justice
6/12/2019
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 2136 would amend Section 38.371, Code of Criminal Procedure, relating to the admissibility of certain evidence in the prosecution of offenses involving family violence. This would allow the introduction of testimony and related evidence of all relevant facts and circumstances that would assist in establishing the nature of the relationship between the victim and the defendant. S.B. 2136 would broaden Article 38.371, which would allow a jury to consider evidence from all prior acts of family violence such as sexual assault, burglary of a habitation, criminal mischief, and other crimes listed in the Penal Code, so long as it assists in determining whether an actor committed the crime.

Currently, Article 38.371 (Evidence in Prosecutions of Certain Offenses Involving Family Violence), Code of Criminal Procedure, allows the introduction of testimony or other evidence of all relevant facts and circumstances that would assist the trier of fact in determining whether the actor committed assault or aggravated assault, or violated various types of restraining orders, when the alleged victim was in a dating relationship with the accused, or a member of the same family or household. This includes testimony or evidence regarding the nature of the relationship between the actor and the alleged victim.

Acts of family violence occur in more than just the five types of cases currently listed under Article 38.371. Family violence happens in cases of sexual assault, burglary of a habitation, criminal mischief, and many other crimes in the Penal Code. Evidence provided through crimes that are within the Penal Code are a critical tool when determining the nature of the relationship between the victim and defendant. In order to establish the nature of the relationship between the victim and the defendant, S.B. 2136 would apply this provision to any offense where family violence is found. (Original Author's/Sponsor's Statement of Intent)

S.B. 2136 amends current law relating to the admissibility of evidence in the prosecution of an offense committed against a family member or certain other individuals or involving exploitation of certain vulnerable individuals.

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 the heading to Article 38.371, Code of Criminal Procedure, to read as follows:

Art. 38.371. EVIDENCE IN PROSECUTION OF OFFENSE COMMITTED AGAINST MEMBER OF DEFENDANT'S FAMILY OR HOUSEHOLD OR PERSON IN DATING RELATIONSHIP WITH DEFENDANT.

SECTION 2. Amends Article 38.371(a), Code of Criminal Procedure, as follows:

(a) 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, for which the alleged

victim is a person whose relationship to or association with the defendant is described by Section 71.0021(b) (relating to the definition of "dating relationship"), 71.003 (Family), or 71.005 (Household), Family Code. Deletes existing text providing 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, that is committed under Section 22.01 (Assault), 22.02 (Aggravated Assault), or 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual), Penal Code, against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, or Section 25.07 (Violation of Certain Court Orders or Conditions of Bond in a Family Violence, Child Abuse or Neglect, Sexual Assault or Abuse, Stalking, or Trafficking Case) or 25.072 (Repeated Violation of Certain Court Orders or Conditions of Bond in Family Violence, Child Abuse or Neglect, Sexual Assault or Abuse, Stalking, or Trafficking Case), Penal Code, if the offense is based on a violation of an order or condition of bond in a case involving family violence.

SECTION 3. Amends Chapter 38, Code of Criminal Procedure, by adding Article 38.471 as follows:

Art. 38.471. EVIDENCE IN PROSECUTION FOR EXPLOITATION OF CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) Authorizes evidence that the defendant has engaged in other conduct that is similar to the alleged criminal conduct, in the prosecution of an offense under Section 32.53 (Exploitation of Child, Elderly Individual, or Disabled Individual), Penal Code, to be admitted for the purpose of showing the defendant's knowledge or intent regarding an element of the offense.

(b) Provides that Rule 403, Texas Rules of Evidence (Exclusion of Relevant Evidence on Special Grounds), applies to this article. Provides that this article does not permit the presentation of character evidence that would otherwise be inadmissible under the Texas Rules of Evidence or other applicable law.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2019.