
By: **Delegates Menes, Conroy, Goldwater, Gutierrez, Kelley, Lee, McComas,
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Introduced and read first time: February 9, 2005

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Evidence - Separate Act of Sexual Misconduct Involving a Minor -**
3 **Admissibility**

4 FOR the purpose of establishing that, in a prosecution for a certain sexual crime
5 involving a victim who is a minor, the court may admit evidence of the
6 defendant's commission of a certain separate act of sexual misconduct involving
7 a minor under certain circumstances; requiring the court to consider certain
8 factors in making a certain determination; requiring the State's Attorney to
9 disclose certain evidence to the defendant within a certain time period, unless
10 the court allows disclosure at a later time for good cause shown; specifying the
11 content of the disclosure to the defendant; prohibiting certain evidence from
12 being referred to in a statement to the jury or introduced at trial unless the
13 court first holds a closed hearing and determines that the evidence is
14 admissible; requiring the court to enter an order stating which evidence may be
15 introduced under certain circumstances; authorizing the court to reconsider a
16 ruling excluding certain evidence and hold an additional closed hearing under
17 certain circumstances; defining a certain term; providing for the construction
18 and application of this Act; and generally relating to the admissibility of
19 evidence in certain criminal proceedings.

20 BY adding to
21 Article - Courts and Judicial Proceedings
22 Section 10-916.1
23 Annotated Code of Maryland
24 (2002 Replacement Volume and 2004 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Courts and Judicial Proceedings**

2 10-916.1.

3 (A) IN THIS SECTION, "ACT OF SEXUAL MISCONDUCT INVOLVING A MINOR"
4 MEANS:

5 (1) A VIOLATION OF § 3-602 OF THE CRIMINAL LAW ARTICLE;

6 (2) A VIOLATION OF FORMER ARTICLE 27, § 35C OF THE CODE
7 OCCURRING BEFORE OCTOBER 1, 2002, THAT INVOLVED SEXUAL ABUSE OF A MINOR;8 (3) A VIOLATION OF TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW
9 ARTICLE INVOLVING A VICTIM WHO IS A MINOR; OR10 (4) A VIOLATION OF FEDERAL LAW OR THE LAW OF ANOTHER STATE
11 THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE ANY OF THE CRIMES
12 SPECIFIED IN ITEMS (1) THROUGH (3) OF THIS SUBSECTION.13 (B) (1) SUBJECT TO SUBSECTION (D) OF THIS SECTION, IN A PROSECUTION
14 FOR A VIOLATION OF § 3-602 OR TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE
15 INVOLVING A VICTIM WHO IS A MINOR, THE COURT MAY ADMIT EVIDENCE OF THE
16 DEFENDANT'S COMMISSION OF A SEPARATE ACT OF SEXUAL MISCONDUCT
17 INVOLVING A MINOR IF THE COURT FINDS:

18 (I) THAT THE EVIDENCE IS RELEVANT;

19 (II) BY CLEAR AND CONVINCING EVIDENCE THAT:

20 1. THE DEFENDANT COMMITTED THE SEPARATE ACT OF
21 SEXUAL MISCONDUCT; AND22 2. THE SEPARATE ACT OF SEXUAL MISCONDUCT WAS
23 COMMITTED WITHIN 25 YEARS BEFORE THE DATE OF THE FILING OF THE CHARGING
24 DOCUMENT IN THE CURRENT PROSECUTION; AND25 (III) THAT THE PROBATIVE VALUE OF THE EVIDENCE IS NOT
26 SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE TO THE
27 DEFENDANT.28 (2) IN DETERMINING WHETHER THE PROBATIVE VALUE OF THE
29 EVIDENCE IS NOT SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR
30 PREJUDICE TO THE DEFENDANT, THE COURT SHALL CONSIDER:31 (I) THE SIMILARITY OF THE SEPARATE ACT TO THE ALLEGED
32 VIOLATION;33 (II) THE SIMILARITY OF THE CHARACTERISTICS OF THE VICTIM OF
34 THE SEPARATE ACT AND THE VICTIM OF THE ALLEGED VIOLATION, INCLUDING THE
35 AGE OF THE VICTIM AND THE RELATIONSHIP TO THE DEFENDANT;

1 (III) THE TIME ELAPSED BETWEEN THE SEPARATE ACT AND THE
2 ALLEGED VIOLATION;

3 (IV) WHETHER THE PROPOSED TESTIMONY ABOUT THE SEPARATE
4 ACT IS CLEAR AND UNEQUIVOCAL REGARDING THE DEFENDANT'S INTENT AND
5 ACTIONS AT THE TIME OF THE COMMISSION OF THE SEPARATE ACT;

6 (V) WHETHER THE EVIDENCE OF THE SEPARATE ACT PROVIDES
7 INFORMATION THAT IS NOT SUPPLIED BY OTHER EVIDENCE;

8 (VI) WHETHER THE EVIDENCE WILL CONFUSE OR MISLEAD THE
9 JURY;

10 (VII) THE IMPACT ON THE CURRENT TRIAL OF THE TIME THAT WILL
11 BE EXPENDED HEARING EVIDENCE OF THE SEPARATE ACT; AND

12 (VIII) ANY OTHER FACTORS THE COURT CONSIDERS APPROPRIATE.

13 (C) (1) IF THE STATE INTENDS TO OFFER EVIDENCE UNDER THIS SECTION,
14 THE STATE'S ATTORNEY SHALL DISCLOSE THE EVIDENCE TO THE DEFENDANT
15 WITHIN 15 DAYS AFTER THE EARLIER OF THE APPEARANCE OF COUNSEL OR THE
16 FIRST APPEARANCE OF THE DEFENDANT BEFORE THE COURT, UNLESS THE COURT
17 ALLOWS DISCLOSURE AT A LATER TIME FOR GOOD CAUSE SHOWN.

18 (2) THE DISCLOSURE SHALL INCLUDE STATEMENTS OF WITNESSES OR
19 A SUMMARY OF THE SUBSTANCE OF ANY TESTIMONY THAT THE STATE EXPECTS TO
20 OFFER.

21 (D) (1) EVIDENCE DESCRIBED IN SUBSECTION (B) OF THIS SECTION MAY
22 NOT BE REFERRED TO IN A STATEMENT TO A JURY OR INTRODUCED IN A TRIAL
23 UNLESS THE COURT FIRST HOLDS A CLOSED HEARING AND DETERMINES THAT THE
24 EVIDENCE IS ADMISSIBLE.

25 (2) IF THE COURT DETERMINES THAT ALL OR SOME OF THE EVIDENCE
26 IS ADMISSIBLE, THE COURT SHALL ENTER AN ORDER STATING WHICH EVIDENCE
27 MAY BE INTRODUCED.

28 (3) THE COURT MAY RECONSIDER A RULING EXCLUDING THE EVIDENCE
29 AND HOLD AN ADDITIONAL CLOSED HEARING IF NEW INFORMATION IS DISCOVERED
30 DURING THE COURSE OF THE TRIAL THAT MAY MAKE THE EVIDENCE ADMISSIBLE.

31 (E) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE ADMISSION OR
32 CONSIDERATION OF EVIDENCE UNDER ANY OTHER RULE OR PROVISION OF LAW.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
34 construed to apply only prospectively and may not be applied or interpreted to have
35 any effect on or application to any prosecution commenced before the effective date of
36 this Act.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2005.