

# SENATE BILL 933

E2, E1

5lr2799

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By: **Senator Cassilly**

Constitutional Requirements Complied with for Introduction in the last 35 Days of Session  
Introduced and read first time: March 13, 2015

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Evidence of Prior Sexual Offense – Admissibility**

3 FOR the purpose of prohibiting, in a prosecution for a certain sexual offense, the court from  
4 barring the introduction of certain evidence that the defendant committed a certain  
5 prior sexual offense on the ground that the admission is unfairly prejudicial unless  
6 the court makes a certain finding; prohibiting a State’s Attorney from introducing  
7 certain evidence under certain circumstances; prohibiting certain evidence from  
8 being disclosed to a jury or introduced at trial unless the court has held a certain  
9 hearing and made certain determinations; requiring a court to state the reasons for  
10 a certain decision in a certain manner; providing that this Act does not limit the  
11 admission or consideration of certain evidence; defining a certain term; and generally  
12 relating to the admissibility of evidence.

13 BY adding to

14 Article – Courts and Judicial Proceedings  
15 Section 10–923  
16 Annotated Code of Maryland  
17 (2013 Replacement Volume and 2014 Supplement)

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

20 **Article – Courts and Judicial Proceedings**

21 **10–923.**

22 **(A) IN THIS SECTION, “SEXUAL OFFENSE” MEANS AN ACT THAT WOULD**  
23 **CONSTITUTE A VIOLATION OF:**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           **(1) TITLE 3, SUBTITLE 3 OR § 3-602 OF THE CRIMINAL LAW ARTICLE;**

2           **(2) 18 U.S.C. CHAPTER 109A;**

3           **(3) SEXUAL ABUSE OF A VULNERABLE ADULT UNDER §**  
4 **3-604(B)(1)(III) OR (2)(III) OF THE CRIMINAL LAW ARTICLE; OR**

5           **(4) A LAW OF ANOTHER STATE, THE UNITED STATES, OR A FOREIGN**  
6 **COUNTRY THAT IS EQUIVALENT TO AN OFFENSE UNDER ITEM (1), (2), OR (3) OF THIS**  
7 **SUBSECTION.**

8           **(B) IN A PROSECUTION FOR A SEXUAL OFFENSE, THE COURT MAY NOT BAR**  
9 **THE INTRODUCTION OF OTHERWISE ADMISSIBLE EVIDENCE THAT THE DEFENDANT**  
10 **COMMITTED A PRIOR SEXUAL OFFENSE ON THE GROUND THAT THE EVIDENCE IS**  
11 **UNFAIRLY PREJUDICIAL UNLESS THE COURT MAKES A SPECIFIC FINDING ON THE**  
12 **RECORD DESCRIBING THE REASONS THE EVIDENCE WOULD BE UNFAIRLY**  
13 **PREJUDICIAL.**

14           **(C) A STATE'S ATTORNEY MAY NOT INTRODUCE EVIDENCE UNDER THIS**  
15 **SECTION UNLESS THE EVIDENCE HAS BEEN DISCLOSED TO THE DEFENDANT AT**  
16 **LEAST 30 DAYS BEFORE THE TRIAL OR AT A LATER TIME IF AUTHORIZED BY THE**  
17 **COURT FOR GOOD CAUSE SHOWN.**

18           **(D) (1) EVIDENCE DESCRIBED IN THIS SECTION MAY NOT BE DISCLOSED**  
19 **TO A JURY OR INTRODUCED AT TRIAL UNLESS THE COURT HAS FIRST HELD A CLOSED**  
20 **HEARING AND DETERMINED THAT:**

21                   **(I) THE EVIDENCE OF A PRIOR SEXUAL OFFENSE WAS PROVEN**  
22 **BY CLEAR AND CONVINCING EVIDENCE;**

23                   **(II) THE COURT HAS USED THE BALANCING TEST REQUIRED**  
24 **UNDER MARYLAND RULE 5-403; AND**

25                   **(III) THE COURT HAS CONSIDERED:**

26                           **1. THE SIMILARITY BETWEEN THE PRIOR SEXUAL**  
27 **OFFENSE AND THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL;**

28                           **2. THE CLOSENESS IN TIME OF THE PRIOR SEXUAL**  
29 **OFFENSE AND THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL;**

1                   **3. THE PRESENCE OR LACK OF INTERVENING EVENTS**  
2 **BETWEEN THE PRIOR SEXUAL OFFENSE AND THE SEXUAL OFFENSE FOR WHICH THE**  
3 **DEFENDANT IS ON TRIAL;**

4                   **4. THE NEED FOR THE EVIDENCE; AND**

5                   **5. ANY OTHER FACTOR THE COURT DEEMS RELEVANT.**

6                   **(2) AT THE CONCLUSION OF A HEARING UNDER THIS SUBSECTION,**  
7 **THE COURT SHALL STATE THE REASONS FOR THE COURT'S DECISION ON THE**  
8 **RECORD IN OPEN COURT OUTSIDE THE PRESENCE OF THE JURY.**

9                   **(E) THIS SECTION DOES NOT LIMIT THE ADMISSION OR CONSIDERATION OF**  
10 **EVIDENCE UNDER ANY MARYLAND RULE OR OTHER PROVISION OF LAW.**

11                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12 October 1, 2015.