

SB0235/578679/1

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 235
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and Ready” and substitute “Lee, McFadden, Muse, Ramirez, and Ready”.

AMENDMENT NO.2

On page 1, in line 2, strike “Prior Sexual Offense” and substitute “Sexually Assaultive Behavior”; in line 3, strike “prohibiting” and substitute “providing that”; strike beginning with the second “the” in line 3 down through the first “certain” in line 4; in line 4, strike “a”; strike beginning with “prior” in line 5 down through “offense;” in line 7 and substitute “sexually assaultive behavior may be admissible for certain reasons; requiring that the State file a certain motion to introduce evidence of certain sexually assaultive behavior within a certain period of time; requiring a motion to include certain information; requiring a court to hold a hearing on a motion outside the presence of a jury; authorizing the court to admit certain evidence if the court makes certain findings; providing factors that a court shall consider;”; and strike beginning with “prohibiting” in line 8 down through “manner;” in line 12.

AMENDMENT NO. 3

On page 1, in line 24, strike “**PRIOR SEXUAL OFFENSE**” and substitute “**SEXUALLY ASSAULTIVE BEHAVIOR**”.

On page 2, in line 11, strike “**(1)**”; and strike beginning with “**A**” in line 12 down through “**SECTION**” in line 17 and substitute “**EVIDENCE OF OTHER SEXUALLY ASSAULTIVE BEHAVIOR BY THE DEFENDANT OCCURRING BEFORE OR AFTER THE OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL MAY BE ADMISSIBLE**”.

(Over)

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On pages 2 and 3, strike in their entirety the lines beginning with line 18 on page 2 through line 14 on page 3, inclusive, and substitute:

“(C) (1) THE STATE SHALL FILE A MOTION OF INTENT TO INTRODUCE EVIDENCE OF SEXUALLY ASSAULTIVE BEHAVIOR AT LEAST 90 DAYS BEFORE TRIAL OR AT A LATER TIME IF AUTHORIZED BY THE COURT FOR GOOD CAUSE.

(2) A MOTION FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE A DESCRIPTION OF THE EVIDENCE.

(3) THE STATE SHALL PROVIDE A COPY OF A MOTION FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO THE DEFENDANT AND INCLUDE ANY OTHER INFORMATION REQUIRED TO BE DISCLOSED UNDER MARYLAND RULE 4-262 OR 4-263.

(D) THE COURT SHALL HOLD A HEARING OUTSIDE THE PRESENCE OF A JURY TO DETERMINE THE ADMISSIBILITY OF EVIDENCE OF SEXUALLY ASSAULTIVE BEHAVIOR.

(E) THE COURT MAY ADMIT EVIDENCE OF SEXUALLY ASSAULTIVE BEHAVIOR IF THE COURT FINDS AND STATES ON THE RECORD THAT:

(1) THE EVIDENCE IS BEING OFFERED TO:

(I) PROVE LACK OF CONSENT; OR

(II) REBUT AN EXPRESS OR IMPLIED ALLEGATION THAT A MINOR VICTIM FABRICATED THE SEXUAL OFFENSE;

(2) THE SEXUALLY ASSAULTIVE BEHAVIOR WAS PROVEN BY CLEAR AND CONVINCING EVIDENCE; AND

(3) THE PROBATIVE VALUE OF THE EVIDENCE IS NOT SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE.

(F) BEFORE MAKING THE FINDINGS UNDER SUBSECTION (E) OF THIS SECTION, THE COURT SHALL CONSIDER:

(1) WHETHER THE ISSUE FOR WHICH THE EVIDENCE OF THE SEXUALLY ASSAULTIVE BEHAVIOR IS BEING OFFERED IS IN DISPUTE;

(2) THE SIMILARITY BETWEEN THE SEXUALLY ASSAULTIVE BEHAVIOR AND THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL;

(3) THE CLOSENESS IN TIME OF THE SEXUALLY ASSAULTIVE BEHAVIOR AND THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL; AND

(4) THE INDEPENDENCE OF THE SEXUALLY ASSAULTIVE BEHAVIOR FROM THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL.”.

On page 3, in line 15, strike “(E)” and substitute “(G)”.