

Chapter 363

(Senate Bill 270)

AN ACT concerning

**Courts – Evidence of Sexually Assaultive Behavior – Admissibility
(Repeat Sexual Predator Prevention Act of 2018)**

FOR the purpose of providing that, in a prosecution for certain sexual offenses, evidence that the defendant committed sexually assaultive behavior at a certain time may be admissible for certain reasons; requiring that the State file a certain motion to introduce evidence of certain sexually assaultive behavior at a certain time; requiring a certain motion to include certain information; requiring the State to provide a copy of a certain motion to the defendant; requiring a court to hold a hearing on a certain motion ~~outside the presence of a jury at a certain time~~ outside the presence of a jury; authorizing the court to admit certain evidence if the court makes certain findings; ~~prohibiting a court from making a certain finding based solely on certain information; requiring a court to consider certain factors at a certain time; providing that this Act does not limit the admission or consideration of certain evidence~~; defining a certain term; and generally relating to the admissibility of evidence.

BY adding to

Article – Courts and Judicial Proceedings
Section 10–923
Annotated Code of Maryland
(2013 Replacement Volume and 2017 Supplement)

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

Article – Courts and Judicial Proceedings**10–923.**

(A) IN THIS SECTION, “SEXUALLY ASSAULTIVE BEHAVIOR” MEANS AN ACT THAT WOULD CONSTITUTE:

- (1) A SEXUAL CRIME UNDER TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE;
- (2) SEXUAL ABUSE OF A MINOR UNDER § 3–602 OF THE CRIMINAL LAW ARTICLE;
- (3) SEXUAL ABUSE OF A VULNERABLE ADULT UNDER § 3–604 OF THE

CRIMINAL LAW ARTICLE;

(4) A VIOLATION OF 18 U.S.C. CHAPTER 109A; OR

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

(B) IN A CRIMINAL TRIAL FOR A SEXUAL OFFENSE LISTED IN SUBSECTION (A)(1), (2), OR (3) OF THIS SECTION, 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, IN ACCORDANCE WITH THIS SECTION.

(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 AT LEAST 30 DAYS BEFORE TRIAL, THE~~ THE COURT SHALL HOLD ~~A HEARING OUTSIDE THE PRESENCE OF A JURY~~ 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 DEFENDANT HAD AN OPPORTUNITY TO CONFRONT AND CROSS-EXAMINE THE WITNESS OR WITNESSES TESTIFYING TO THE SEXUALLY ASSAULTIVE BEHAVIOR;

~~(2) (3) THE SEXUALLY ASSAULTIVE BEHAVIOR WAS PROVEN BY CLEAR AND CONVINCING EVIDENCE; AND~~

~~(3) (4) THE PROBATIVE VALUE OF THE EVIDENCE IS NOT SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE EVIDENCE MEETS THE REQUIREMENTS OF MARYLAND RULE 5-403 PROBATIVE VALUE OF THE EVIDENCE IS NOT SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE.~~

~~(F) A COURT MAY NOT FIND THAT EVIDENCE OF SEXUALLY ASSAULTIVE BEHAVIOR IS UNFAIRLY PREJUDICIAL BASED SOLELY ON THE FACT THAT IT INVOLVES A PRIOR SEXUAL OFFENSE.~~

~~(G) (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; AND~~

~~(5) THE OBJECTIVE IMPROBABILITY THAT THE DEFENDANT WOULD BE ACCUSED OF SEXUALLY ASSAULTIVE BEHAVIOR ON MORE THAN ONE OCCASION BASED ON THE CIRCUMSTANCES.~~

~~(H) (G) THIS SECTION DOES NOT LIMIT THE ADMISSION OR CONSIDERATION OF EVIDENCE UNDER ANY MARYLAND RULE OR OTHER PROVISION OF LAW.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2018.

Approved by the Governor, May 8, 2018.