

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 212

(Senator Sfikas)

Judicial Proceedings

Judiciary

Sexual Offenses - Reputation and Opinion Evidence - Admissibility

This bill generally prohibits the introduction of evidence regarding a victim's prior sexual activity in a prosecution for: (1) rape; (2) a sexual offense; (3) an attempted rape or sexual offense; (4) sexual conduct between a correctional or juvenile justice employee and an inmate or confined child; (5) sexual abuse of a minor; (6) sodomy; (7) an unnatural or perverted sexual practice; or (8) incest.

The bill expands the list of offenses for which there is a prohibition against introducing evidence, including opinion evidence, regarding a victim's reputation for chastity to include third and fourth degree sexual offenses and the offenses numbered four through eight, above. The bill also expands the list of offenses for which evidence of a specific instance of prior sexual conduct may be admitted upon a finding that the evidence is relevant, material, not overly prejudicial, and meets other specified criteria.

Fiscal Summary

State Effect: This bill is procedural in nature and is not expected to have any significant impact on State finances.

Local Effect: None -- see above.

Small Business Effect: None.

Analysis

Bill Summary: The bill prohibits the introduction of evidence, including opinion evidence, relating to a victim's prior sexual activity in a prosecution for any of the following crimes (inclusive of any lesser-included crimes):

- first or second degree rape or attempted rape;
- first, second, third, or fourth degree sexual offense (unlawfully engaging in a sexual act with another as defined by Criminal Law Article § 3-305 to 3-308);
- attempted first or second degree sexual offense;
- sexual conduct between a correctional or juvenile justice employee and an inmate or confined child;
- sexual abuse of a minor;
- sodomy;
- an unnatural or perverted sexual practice; or
- incest.

The bill expands the list of offenses for which there is a prohibition against introducing evidence, including opinion evidence, relating to a victim's reputation for chastity to include all of the above-listed offenses.

The bill also expands the list of offenses -- to include all of the above-listed offenses -- for which evidence of a specific instance of prior sexual conduct may be admitted under these circumstances:

- a judge finds that the evidence is relevant, material, not overly prejudicial; and
- the evidence --
 - is of the victim's past sexual conduct with the defendant;
 - is of a specific instance of sexual activity showing the source or origin of semen, pregnancy, disease, or trauma;
 - supports a claim that the victim has an ulterior motive to accuse the defendant of the crime; or
 - is offered for impeachment after the prosecutor has put the victim's prior sexual conduct in issue.

Current Law: Evidence, including opinion evidence, relating to a victim's reputation for chastity may not be introduced in a prosecution for rape or attempted rape nor for a sexual offense in the first or second degree or attempted sexual offense in the first or second degree.

Evidence of a specific instance of a victim's prior sexual conduct may be admitted in a prosecution for rape or attempted rape, a sexual offense in the first or second degree, or an attempted sexual offense in the first or second degree only if --

- a judge finds that the evidence is relevant, material, not overly prejudicial; and
- the evidence --
 - is of the victim’s past sexual conduct with the defendant;
 - is of a specific instance of sexual activity showing the source or origin of semen, pregnancy, disease, or trauma;
 - supports a claim that the victim has an ulterior motive to accuse the defendant of the crime; or
 - is offered for impeachment after the prosecutor has put the victim’s prior sexual conduct in issue.

Background: Laws known as “rape shield laws” exist in all 50 states to limit the evidentiary use of a victim’s prior sexual history as a way of undermining the victim’s credibility. Most states’ laws allow the court to admit such evidence where the prior sexual history is deemed by the court to be relevant.

Additional Comments: This bill amends the new Criminal Law Article, introduced in the 2002 session as HB 11. This statute was formerly found in Article 27 § 461A.

Additional Information

Prior Introductions: None.

Cross File: HB 1067 (Delegate Montague, *et al.*) – Judiciary.

Information Source(s): State’s Attorneys’ Association, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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