Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

House Bill 196   (Delegate Menes, *et al.*)

Judiciary   Judicial Proceedings

Sexual Offenses - Reputation and Opinion Evidence and Evidence of Prior Sexual Conduct - Admissibility

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The bill prohibits the introduction of evidence relating to a victim's reputation for chastity or abstinence, and opinion evidence relating to a victim's chastity or abstinence, in a prosecution for any rape, other sexual offense, correctional sexual offense, sodomy, incest, sexual abuse of a minor or vulnerable adult, or unnatural or perverted sexual practice. It also expands the list of offenses, to cover all of the preceding, 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 relating to a victim's reputation for chastity or abstinence and opinion evidence relating to a victim's chastity or abstinence 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;
- sexual abuse of a vulnerable adult;
- sodomy;
- an unnatural or perverted sexual practice; or
- incest.

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 certain circumstances.

Current Law: Evidence relating to a victim's reputation for chastity and opinion evidence relating to a victim's chastity may not be introduced in a prosecution for rape, attempted rape, 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 Information

Prior Introductions: A similar bill, HB 1067 of 2002, passed the House with amendments, but no further action was taken. HB 1067's cross file, SB 212 of 2002, passed the Senate and passed the House with amendments, but no further action was taken.

Cross File: SB 453 (Senator Forehand, *et al.*) – Judicial Proceedings.

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

Fiscal Note History: First Reader - February 7, 2003
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Analysis by: Rita A. Reimer

Direct Inquiries to:
(410) 946-5510
(301) 970-5510