

HOUSE BILL 401

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2004 Regular Session
4r0308
CF 4r1830

By: **Delegates Menes, Amedori, Conroy, Goldwater, Gutierrez, Kelley, Lee,
McComas, Nathan-Pulliam, Petzold, Quinter, Simmons, Sophocleus,
and Zirkin**

Introduced and read first time: January 29, 2004

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Evidence - Separate Act of Sexual Misconduct Involving a Minor -**
3 **Admissibility**

4 FOR the purpose of authorizing a court to admit evidence of a defendant's commission
5 of a certain separate act of sexual misconduct involving a minor in a prosecution
6 for certain sexual offenses involving a minor under certain circumstances;
7 requiring the State's Attorney to disclose to the defendant the State's intent to
8 offer the evidence within a certain time period before the trial unless the court
9 allows disclosure at a later time for good cause shown; specifying the content of
10 the disclosure to the defendant; prohibiting certain evidence from being referred
11 to in a statement to the jury or introduced at trial unless the court first holds a
12 closed hearing and determines that the evidence is admissible; requiring the
13 court to enter an order stating which evidence may be introduced under certain
14 circumstances; authorizing the court to reconsider a ruling excluding evidence
15 and hold an additional closed hearing if new information is discovered during
16 the trial that may make the evidence admissible; defining certain terms;
17 providing for the construction and application of this Act; and generally relating
18 to the admissibility of evidence in criminal proceedings.

19 BY adding to
20 Article - Courts and Judicial Proceedings
21 Section 10-916.1
22 Annotated Code of Maryland
23 (2002 Replacement Volume and 2003 Supplement)

24 BY repealing and reenacting, without amendments,
25 Article - Criminal Law
26 Section 1-101(g)
27 Annotated Code of Maryland
28 (2002 Volume and 2003 Supplement)

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

3 **Article - Courts and Judicial Proceedings**

4 10-916.1.

5 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (2) "ACT OF SEXUAL MISCONDUCT INVOLVING A MINOR" MEANS:

8 (I) A VIOLATION OF § 3-602 OF THE CRIMINAL LAW ARTICLE;

9 (II) A VIOLATION OF FORMER ARTICLE 27, § 35C OF THE CODE
10 OCCURRING BEFORE OCTOBER 1, 2002, THAT INVOLVED SEXUAL ABUSE OF A MINOR;

11 (III) A VIOLATION OF TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW
12 ARTICLE INVOLVING A VICTIM WHO IS A MINOR; OR

13 (IV) A VIOLATION OF FEDERAL LAW OR THE LAW OF ANOTHER
14 STATE THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE ANY OF THE
15 CRIMES SPECIFIED IN ITEMS (I) THROUGH (III) OF THIS PARAGRAPH.

16 (3) "MINOR" HAS THE MEANING STATED IN § 1-101 OF THE CRIMINAL
17 LAW ARTICLE.

18 (B) SUBJECT TO MARYLAND RULE 5-403 AND SUBSECTION (D) OF THIS
19 SECTION, IN A PROSECUTION FOR A VIOLATION OF § 3-602 OF THE CRIMINAL LAW
20 ARTICLE OR A VIOLATION OF TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE
21 INVOLVING A VICTIM WHO IS A MINOR, EVIDENCE OF THE DEFENDANT'S
22 COMMISSION OF A SEPARATE ACT OF SEXUAL MISCONDUCT INVOLVING A MINOR IS
23 ADMISSIBLE IF THE COURT:

24 (1) IN A BENCH TRIAL, FINDS BY A PREPONDERANCE OF THE EVIDENCE
25 THAT THE DEFENDANT COMMITTED THE SEPARATE ACT; OR

26 (2) IN A JURY TRIAL, FINDS THAT A REASONABLE JURY COULD FIND BY
27 A PREPONDERANCE OF EVIDENCE THAT THE DEFENDANT COMMITTED THE
28 SEPARATE ACT.

29 (C) (1) IF THE STATE INTENDS TO OFFER EVIDENCE UNDER THIS SECTION,
30 THE STATE'S ATTORNEY SHALL DISCLOSE THE EVIDENCE TO THE DEFENDANT AT
31 LEAST 15 DAYS BEFORE THE SCHEDULED DATE OF TRIAL, UNLESS THE COURT
32 ALLOWS DISCLOSURE AT A LATER TIME FOR GOOD CAUSE SHOWN.

33 (2) THE DISCLOSURE SHALL INCLUDE STATEMENTS OF WITNESSES OR
34 A SUMMARY OF THE SUBSTANCE OF ANY TESTIMONY THAT THE STATE EXPECTS TO
35 OFFER.

1 (D) (1) EVIDENCE DESCRIBED IN SUBSECTION (B) OF THIS SECTION MAY
2 NOT BE REFERRED TO IN A STATEMENT TO A JURY OR INTRODUCED IN A TRIAL
3 UNLESS THE COURT FIRST HOLDS A CLOSED HEARING AND DETERMINES THAT THE
4 EVIDENCE IS ADMISSIBLE.

5 (2) IF THE COURT DETERMINES THAT ALL OR SOME OF THE EVIDENCE
6 IS ADMISSIBLE, THE COURT SHALL ENTER AN ORDER STATING WHICH EVIDENCE
7 MAY BE INTRODUCED.

8 (3) THE COURT MAY RECONSIDER A RULING EXCLUDING THE EVIDENCE
9 AND HOLD AN ADDITIONAL CLOSED HEARING IF NEW INFORMATION IS DISCOVERED
10 DURING THE COURSE OF THE TRIAL THAT MAY MAKE THE EVIDENCE ADMISSIBLE.

11 (E) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE ADMISSION OR
12 CONSIDERATION OF EVIDENCE UNDER ANY OTHER RULE OR PROVISION OF LAW.

13 **Article - Criminal Law**

14 1-101.

15 (g) "Minor" means an individual under the age of 18 years.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
17 construed to apply only prospectively and may not be applied or interpreted to have
18 any effect on or application to any prosecution commenced before the effective date of
19 this Act.

20 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2004.