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By: **Senators Brochin, Forehand, Garagiola, and Stone**

Introduced and read first time: January 20, 2006

Assigned to: Judicial Proceedings

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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 2005 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 2005 Supplement)

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

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**Article - Courts and Judicial Proceedings**

2 10-916.1.

3 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
4 INDICATED.

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

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

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

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

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

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

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

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

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

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

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

34 (D) (1) EVIDENCE DESCRIBED IN SUBSECTION (B) OF THIS SECTION MAY  
35 NOT BE REFERRED TO IN A STATEMENT TO A JURY OR INTRODUCED IN A TRIAL

1 UNLESS THE COURT FIRST HOLDS A CLOSED HEARING AND DETERMINES THAT THE  
2 EVIDENCE IS ADMISSIBLE.

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

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

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

11 **Article - Criminal Law**

12 1-101.

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

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

18 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 October 1, 2006.