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

Introduced and read first time: January 20, 2006

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 9, 2006

CHAPTER_____

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

1 Section 1-101(g)
 2 Annotated Code of Maryland
 3 (2002 Volume and 2005 Supplement)

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

6 **Article - Courts and Judicial Proceedings**

7 10-916.1.

8 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
 9 INDICATED.

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

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

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

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

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

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

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

27 (1) ~~(I)~~ (I) IN A BENCH TRIAL, FINDS BY ~~A PREPONDERANCE OF THE~~
 28 CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT COMMITTED THE
 29 SEPARATE ACT; OR

30 ~~(2)~~ (II) IN A JURY TRIAL, FINDS THAT A REASONABLE JURY COULD
 31 FIND BY ~~A PREPONDERANCE OF~~ CLEAR AND CONVINCING EVIDENCE THAT THE
 32 DEFENDANT COMMITTED THE SEPARATE ACT; ~~AND~~

33 (2) FINDS THAT THE PROBATIVE VALUE OF THE EVIDENCE IS NOT
 34 SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE AGAINST
 35 THE DEFENDANT.

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

5 (2) THE DISCLOSURE SHALL INCLUDE STATEMENTS OF WITNESSES OR
6 A SUMMARY OF THE SUBSTANCE OF ANY TESTIMONY THAT THE STATE EXPECTS TO
7 OFFER.

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

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

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

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

20

Article - Criminal Law

21 1-101.

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

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

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