

# SENATE BILL 61

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SB 159/06 – JPR

71r0637

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By: **Senators Brochin, Forehand, and Stone**  
Introduced and read first time: January 19, 2007  
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 (2006 Replacement Volume)

24 BY repealing and reenacting, without amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Criminal Law  
2 Section 1–101(g)  
3 Annotated Code of Maryland  
4 (2002 Volume and 2006 Supplement)

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

7 **Article – Courts and Judicial Proceedings**

8 **10–916.1.**

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

11 (2) “ACT OF SEXUAL MISCONDUCT INVOLVING A MINOR” MEANS:

12 (I) A VIOLATION OF § 3–602 OF THE CRIMINAL LAW  
13 ARTICLE;

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

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

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

22 (3) “MINOR” HAS THE MEANING STATED IN § 1–101 OF THE  
23 CRIMINAL LAW ARTICLE.

24 (B) SUBJECT TO SUBSECTION (D) OF THIS SECTION, IN A PROSECUTION  
25 FOR A VIOLATION OF § 3–602 OF THE CRIMINAL LAW ARTICLE OR A VIOLATION  
26 OF TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE INVOLVING A VICTIM  
27 WHO IS A MINOR, EVIDENCE OF THE DEFENDANT’S COMMISSION OF A SEPARATE  
28 ACT OF SEXUAL MISCONDUCT INVOLVING A MINOR IS ADMISSIBLE IF THE  
29 COURT:

1           (1) (I) IN A BENCH TRIAL, FINDS BY CLEAR AND CONVINCING  
2 EVIDENCE THAT THE DEFENDANT COMMITTED THE SEPARATE ACT; OR

3                   (II) IN A JURY TRIAL, FINDS THAT A REASONABLE JURY  
4 COULD FIND BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT  
5 COMMITTED THE SEPARATE ACT; AND

6           (2) FINDS THAT THE PROBATIVE VALUE OF THE EVIDENCE IS NOT  
7 SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE AGAINST  
8 THE DEFENDANT.

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

14                   (2) THE DISCLOSURE SHALL INCLUDE STATEMENTS OF  
15 WITNESSES OR A SUMMARY OF THE SUBSTANCE OF ANY TESTIMONY THAT THE  
16 STATE EXPECTS TO OFFER.

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

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

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

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

1 **Article – Criminal Law**

2 1–101.

3 (g) “Minor” means an individual under the age of 18 years.

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

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 October 1, 2007.