

SENATE BILL 61

E2
SB 159/06 – JPR

71r0637

By: **Senators Brochin, Forehand, and Stone**
Introduced and read first time: January 19, 2007
Assigned to: Judicial Proceedings

Committee Report: Favorable
Senate action: Adopted
Read second time: February 23, 2007

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 10-916.1
2 Annotated Code of Maryland
3 (2006 Replacement Volume)

4 BY repealing and reenacting, without amendments,
5 Article – Criminal Law
6 Section 1-101(g)
7 Annotated Code of Maryland
8 (2002 Volume and 2006 Supplement)

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

11 **Article – Courts and Judicial Proceedings**

12 **10-916.1.**

13 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
14 MEANINGS INDICATED.

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

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

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

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

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

26 (3) “MINOR” HAS THE MEANING STATED IN § 1-101 OF THE
27 CRIMINAL LAW ARTICLE.

1 **(B) SUBJECT TO SUBSECTION (D) OF THIS SECTION, IN A PROSECUTION**
2 **FOR A VIOLATION OF § 3-602 OF THE CRIMINAL LAW ARTICLE OR A VIOLATION**
3 **OF TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE INVOLVING A VICTIM**
4 **WHO IS A MINOR, EVIDENCE OF THE DEFENDANT'S COMMISSION OF A SEPARATE**
5 **ACT OF SEXUAL MISCONDUCT INVOLVING A MINOR IS ADMISSIBLE IF THE**
6 **COURT:**

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

9 **(II) IN A JURY TRIAL, FINDS THAT A REASONABLE JURY**
10 **COULD FIND BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT**
11 **COMMITTED THE SEPARATE ACT; AND**

12 **(2) FINDS THAT THE PROBATIVE VALUE OF THE EVIDENCE IS NOT**
13 **SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE AGAINST**
14 **THE DEFENDANT.**

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

20 **(2) THE DISCLOSURE SHALL INCLUDE STATEMENTS OF**
21 **WITNESSES OR A SUMMARY OF THE SUBSTANCE OF ANY TESTIMONY THAT THE**
22 **STATE EXPECTS TO OFFER.**

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

27 **(2) IF THE COURT DETERMINES THAT ALL OR SOME OF THE**
28 **EVIDENCE IS ADMISSIBLE, THE COURT SHALL ENTER AN ORDER STATING WHICH**
29 **EVIDENCE MAY BE INTRODUCED.**

30 **(3) THE COURT MAY RECONSIDER A RULING EXCLUDING THE**
31 **EVIDENCE AND HOLD AN ADDITIONAL CLOSED HEARING IF NEW INFORMATION**

1 IS DISCOVERED DURING THE COURSE OF THE TRIAL THAT MAY MAKE THE
2 EVIDENCE ADMISSIBLE.

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

6 Article - Criminal Law

7 1-101.

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.