## **SENATE BILL 447**

E2, E1 1lr1210

By: Senators Brochin and Stone

Introduced and read first time: February 4, 2011

Assigned to: Judicial Proceedings

## A BILL ENTITLED

AN AC	T concerni	ng
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## Evidence – Separate Act of Sexual Misconduct Involving a Minor – 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 and 2010 Supplement)

24 BY repealing and reenacting, without amendments,

25 Article – Criminal Law

Section 1-101(g)

27 Annotated Code of Maryland

28 (2002 Volume and 2010 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 6 MEANINGS INDICATED.
- 7 (2) "ACT OF SEXUAL MISCONDUCT INVOLVING A MINOR" MEANS A 8 CONVICTION FOR:
- 9 (I) A VIOLATION OF § 3-602 OF THE CRIMINAL LAW 10 ARTICLE;
- 11 (II) A VIOLATION OF FORMER ARTICLE 27, § 35C OF THE
- 12 CODE OCCURRING BEFORE OCTOBER 1, 2002, THAT INVOLVED SEXUAL ABUSE
- 13 **OF A MINOR**;
- 14 (III) A VIOLATION OF TITLE 3, SUBTITLE 3 OF THE
- 15 CRIMINAL LAW ARTICLE INVOLVING A VICTIM WHO IS A MINOR; OR
- 16 (IV) A VIOLATION OF FEDERAL LAW OR THE LAW OF
- 17 ANOTHER STATE THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE ANY
- 18 OF THE CRIMES SPECIFIED IN ITEMS (I) THROUGH (III) OF THIS PARAGRAPH.
- 19 (3) "MINOR" HAS THE MEANING STATED IN § 1–101 OF THE 20 CRIMINAL LAW ARTICLE.
- 21 (B) SUBJECT TO SUBSECTION (D) OF THIS SECTION, IN A PROSECUTION
- 22 FOR A VIOLATION OF § 3-602 OF THE CRIMINAL LAW ARTICLE OR A VIOLATION
- 23 OF TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE INVOLVING A VICTIM
- 24 WHO IS A MINOR, EVIDENCE OF THE DEFENDANT'S COMMISSION OF A SEPARATE
- 25 ACT OF SEXUAL MISCONDUCT INVOLVING A MINOR IS ADMISSIBLE IF THE
- 26 COURT:
- 27 (1) (I) IN A BENCH TRIAL, FINDS BY CLEAR AND CONVINCING
- 28 EVIDENCE THAT THE DEFENDANT COMMITTED THE SEPARATE ACT; OR
- 29 (II) IN A JURY TRIAL, FINDS THAT A REASONABLE JURY
- 30 COULD FIND BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT
- 31 COMMITTED THE SEPARATE ACT; AND

- 1 (2) FINDS THAT THE PROBATIVE VALUE OF THE EVIDENCE IS NOT SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE AGAINST THE DEFENDANT.
- 4 (C) (1) IF THE STATE INTENDS TO OFFER EVIDENCE UNDER THIS
  5 SECTION, THE STATE'S ATTORNEY SHALL DISCLOSE THE EVIDENCE TO THE
  6 DEFENDANT AT LEAST 15 DAYS BEFORE THE SCHEDULED DATE OF TRIAL,
  7 UNLESS THE COURT ALLOWS DISCLOSURE AT A LATER TIME FOR GOOD CAUSE
  8 SHOWN.
- 9 (2) THE DISCLOSURE SHALL INCLUDE STATEMENTS OF 10 WITNESSES OR A SUMMARY OF THE SUBSTANCE OF ANY TESTIMONY THAT THE 11 STATE EXPECTS TO OFFER.
- 12 (D) (1) EVIDENCE DESCRIBED IN SUBSECTION (B) OF THIS SECTION
  13 MAY NOT BE REFERRED TO IN A STATEMENT TO A JURY OR INTRODUCED IN A
  14 TRIAL UNLESS THE COURT FIRST HOLDS A CLOSED HEARING AND DETERMINES
  15 THAT THE EVIDENCE IS ADMISSIBLE.
- 16 (2) IF THE COURT DETERMINES THAT ALL OR SOME OF THE EVIDENCE IS ADMISSIBLE, THE COURT SHALL ENTER AN ORDER STATING WHICH EVIDENCE MAY BE INTRODUCED.
- 19 (3) THE COURT MAY RECONSIDER A RULING EXCLUDING THE
  20 EVIDENCE AND HOLD AN ADDITIONAL CLOSED HEARING IF NEW INFORMATION
  21 IS DISCOVERED DURING THE COURSE OF THE TRIAL THAT MAY MAKE THE
  22 EVIDENCE ADMISSIBLE.
- 23 (E) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE ADMISSION OR CONSIDERATION OF EVIDENCE UNDER ANY OTHER RULE OR PROVISION OF LAW.

## 26 Article - Criminal Law

- 27 1–101.
- 28 (g) "Minor" means an individual under the age of 18 years.
- SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any prosecution commenced before the effective date of this Act.
- SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.