

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 720 (Senators Brochin and Stone)
Judicial Proceedings

Courts - Prosecution for Sex Offense - Evidence of Prior Act

This bill makes evidence of another criminal act of a defendant admissible for any purpose in the trial of a defendant charged with a specified crime. The evidence of another criminal act is only admissible if the court finds, or if a reasonable jury could find, by clear and convincing evidence that the defendant committed the separate act, the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice against the defendant, and specified other conditions are met.

The bill applies prospectively to a prosecution commenced on or after the bill's October 1, 2014 effective date.

Fiscal Summary

State Effect: The bill's changes can be implemented with existing resources. No effect on revenues.

Local Effect: The bill's changes can be implemented with existing resources. No effect on revenues.

Small Business Effect: None.

Analysis

Bill Summary: The bill specifies that the evidence of another criminal act of the defendant is admissible for any purpose in a prosecution for a violation of any of the following crimes: (1) sexual abuse of a minor; (2) first and second degree rape; (3) first, second, third, and fourth degree sexual offense; (4) first and second degree attempted

rape; (5) first and second degree sexual offense; (6) sexual contact between a Department of Juvenile Services employee and an individual confined in a child care institution; (7) sodomy; (8) unnatural or perverted sexual practice; (9) incest; and (10) sexual solicitation of a minor.

The State's attorney must disclose the evidence sought to be admitted to the defendant at least 15 days prior to trial, unless the court makes an exception for good cause. The evidence may not be referred to in a statement to a jury or introduced in a trial unless the court first holds a closed hearing and determines that the evidence is admissible.

Current Law: The Maryland Rules generally follow the Federal Rules of Evidence (FRE). Generally, evidence of a person's character or character trait is not admissible to prove that a person acted in accordance with the character trait on a particular occasion. Under Maryland Rule 404(b), which is identical to FRE 404(b), the evidence of a defendant's other crimes, wrongs, or acts is not admissible when the evidence is offered to show action that conforms to those prior actions. Such evidence is admissible only for the limited purpose of showing motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

Except as otherwise specified, all relevant evidence is admissible. Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Background: The common law "propensity rule," which dates back to the seventeenth century, prohibits the use of character evidence to show a person's propensity to act in accordance with his or her character traits or prior acts. Its proponents reason that the rule is necessary to ensure that a defendant receives a fair trial because, if the evidence is admitted, juries may overvalue the probative force of the prior conduct or may punish for a prior act rather than for the charged crime. There is substantial support in Maryland case law for the propensity rule. See, e.g., *Behrel v. State*, 151 Md. App. 64 (2003); *Weiland v. State*, 101 Md. App. 1 (1994); *Acuna v. Maryland*, 332 Md. 65 (1993).

However, Maryland courts have also accepted a "sexual propensity" exception to the general rule against admission of evidence of prior bad acts when a defendant is being prosecuted for a sexual crime and "...the prior illicit sexual acts [of the defendant] are similar to the offense for which the accused is being tried and involve the same victim." *Vogel v. State*, 315 Md. 458, 466 (1989). See also *State v. Westpoint*, 404 Md. 455 (2009) (evidence of defendant's prior bad acts which resulted in defendant being

convicted of third degree sexual offense were admissible under the sexual propensity exception to Maryland Rule 5-404(b) since the acts were similar and the victim was the same).

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Department of Legislative Services

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ncs/kdm

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