

**Department of Legislative Services**  
Maryland General Assembly  
2015 Session

**FISCAL AND POLICY NOTE**

House Bill 1191 (Delegate B. Wilson)  
Rules and Executive Nominations

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**Criminal Law - Sexual Offenses - Evidence of Defendant's Past Conduct**

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This bill makes evidence that a defendant committed sexual abuse of a vulnerable adult or a crime specified in Title 3, Subtitle 3 of the Criminal Law Article (“sexual crime”) in the past admissible in a prosecution of the defendant for sexual abuse of a vulnerable adult, a sexual crime, or a lesser included crime. Evidence that a defendant committed sexual abuse of a minor in the past may be admitted in a prosecution of the defendant for sexual abuse of a minor or a lesser included crime.

If a prosecutor intends to offer evidence of a defendant’s past conduct, the prosecutor must disclose the evidence sought to be admitted to the defendant at least 15 days prior to trial or later, if authorized by the court for good cause shown. A prosecutor may satisfy this requirement as it applies to witness testimony by disclosing witness statements or a summary of the expected testimony to the defendant.

The bill’s provisions do not limit the admission or consideration of evidence under any rule or other provision of law.

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**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.

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## Analysis

**Current Law:** Title 3, Subtitle 3 of the Criminal Law Article contains the following offenses: (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) attempted first- and second-degree sexual offense; (6) continuing course of conduct with a child; (7) sexual contact between a Department of Juvenile Services employee and an individual confined in a child care institution; (8) sodomy; (9) unnatural or perverted sexual practice; (10) incest; and (11) sexual solicitation of a minor.

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).

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### **Additional Information**

**Prior Introductions:** HB 1528 of 2014 received a hearing in the House Judiciary Committee. No further action was taken on the bill.

**Cross File:** None. However, HB 1205 (Delegate Anderson – Rules and Executive Nominations) is identical.

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

**Fiscal Note History:** First Reader - April 6, 2015  
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