

SENATE BILL 235

E2, E1

6lr1016

By: **Senators Brochin, Cassilly, Raskin, and Ready**

Introduced and read first time: January 22, 2016

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Evidence of Prior Sexual Offense – Admissibility**

3 FOR the purpose of prohibiting, in a prosecution for certain sexual offenses, the court from
4 barring the introduction of certain evidence that the defendant committed a certain
5 prior sexual offense on the ground that the admission is unfairly prejudicial unless
6 the court makes a certain finding; prohibiting a court from finding that certain
7 evidence is unduly prejudicial solely because it involves a prior sexual offense;
8 prohibiting a State’s Attorney from introducing certain evidence under certain
9 circumstances; prohibiting certain evidence from being disclosed to a jury or
10 introduced at trial unless the court has held a certain hearing and made certain
11 determinations; requiring a court to state the reasons for a certain decision in a
12 certain manner; providing that this Act does not limit the admission or consideration
13 of certain evidence; defining a certain term; and generally relating to the
14 admissibility of evidence.

15 BY adding to

16 Article – Courts and Judicial Proceedings
17 Section 10–923
18 Annotated Code of Maryland
19 (2013 Replacement Volume and 2015 Supplement)

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

22 **Article – Courts and Judicial Proceedings**

23 **10–923.**

24 **(A) IN THIS SECTION, “PRIOR SEXUAL OFFENSE” MEANS AN ACT THAT**
25 **WOULD CONSTITUTE:**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(1) A SEXUAL CRIME UNDER TITLE 3, SUBTITLE 3 OF THE CRIMINAL**
2 **LAW ARTICLE;**

3 **(2) SEXUAL ABUSE OF A MINOR UNDER § 3-602 OF THE CRIMINAL**
4 **LAW ARTICLE;**

5 **(3) SEXUAL ABUSE OF A VULNERABLE ADULT UNDER § 3-604 OF THE**
6 **CRIMINAL LAW ARTICLE;**

7 **(4) A VIOLATION OF 18 U.S.C. CHAPTER 109A; OR**

8 **(5) A VIOLATION OF A LAW OF ANOTHER STATE, THE UNITED STATES,**
9 **OR A FOREIGN COUNTRY THAT IS EQUIVALENT TO AN OFFENSE UNDER ITEM (1), (2),**
10 **(3), OR (4) OF THIS SUBSECTION.**

11 **(B) (1) IN A CRIMINAL TRIAL FOR A SEXUAL OFFENSE LISTED IN**
12 **SUBSECTION (A)(1), (2), OR (3) OF THIS SECTION, A COURT MAY NOT BAR THE**
13 **INTRODUCTION OF OTHERWISE ADMISSIBLE EVIDENCE THAT THE DEFENDANT**
14 **COMMITTED A PRIOR SEXUAL OFFENSE ON THE GROUND THAT THE EVIDENCE IS**
15 **UNFAIRLY PREJUDICIAL TO A DEFENDANT UNLESS THE COURT MAKES A SPECIFIC**
16 **FINDING ON THE RECORD AFTER CONSIDERING THE FACTORS LISTED IN**
17 **SUBSECTION (D)(1) OF THIS SECTION.**

18 **(2) A COURT MAY NOT FIND THAT EVIDENCE IS UNFAIRLY**
19 **PREJUDICIAL UNDER THIS SUBSECTION SOLELY BECAUSE THE EVIDENCE INVOLVES**
20 **A PRIOR SEXUAL OFFENSE.**

21 **(C) A STATE'S ATTORNEY MAY NOT INTRODUCE EVIDENCE UNDER THIS**
22 **SECTION UNLESS THE EVIDENCE WAS DISCLOSED TO THE DEFENDANT AT LEAST 30**
23 **DAYS BEFORE THE TRIAL OR AT A LATER TIME IF AUTHORIZED BY THE COURT FOR**
24 **GOOD CAUSE SHOWN.**

25 **(D) (1) EVIDENCE OF A PRIOR SEXUAL OFFENSE MAY NOT BE DISCLOSED**
26 **TO A JURY OR INTRODUCED AT TRIAL UNLESS:**

27 **(I) THE COURT HAS FIRST HELD A CLOSED HEARING AND**
28 **DETERMINED THAT THE EVIDENCE OF THE PRIOR SEXUAL OFFENSE WAS PROVEN BY**
29 **CLEAR AND CONVINCING EVIDENCE;**

30 **(II) THE COURT HAS USED THE BALANCING TEST REQUIRED**
31 **UNDER MARYLAND RULE 5-403; AND**

1 **(III) THE COURT HAS CONSIDERED:**

2 **1. THE SIMILARITY BETWEEN THE PRIOR SEXUAL**
3 **OFFENSE AND THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL;**

4 **2. THE CLOSENESS IN TIME OF THE PRIOR SEXUAL**
5 **OFFENSE AND THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL;**

6 **3. THE PRESENCE OR LACK OF INTERVENING EVENTS**
7 **BETWEEN THE PRIOR SEXUAL OFFENSE AND THE SEXUAL OFFENSE FOR WHICH THE**
8 **DEFENDANT IS ON TRIAL;**

9 **4. THE NEED FOR THE EVIDENCE; AND**

10 **5. ANY OTHER FACTOR THAT THE COURT CONSIDERS**
11 **RELEVANT.**

12 **(2) AT THE CONCLUSION OF A HEARING UNDER THIS SUBSECTION,**
13 **THE COURT SHALL STATE THE REASONS FOR THE COURT'S DECISION ON THE**
14 **RECORD IN OPEN COURT AND OUTSIDE THE PRESENCE OF THE JURY.**

15 **(E) THIS SECTION DOES NOT LIMIT THE ADMISSION OR CONSIDERATION OF**
16 **EVIDENCE UNDER ANY MARYLAND RULE OR OTHER PROVISION OF LAW.**

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2016.