

HOUSE BILL 425

E2

8lr1901

By: **Delegate Shank**

Introduced and read first time: January 28, 2008

Assigned to: Judiciary

A BILL ENTITLED

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 conviction
5 for a certain separate act of sexual misconduct involving a minor in a
6 prosecution for certain sexual offenses involving a minor under certain
7 circumstances; requiring the State's Attorney to disclose to the defendant the
8 State's intent to offer the evidence within a certain time period before the trial
9 unless the court allows disclosure at a later time for good cause shown;
10 specifying the content of the disclosure to the defendant; prohibiting certain
11 evidence from being referred to in a statement to the jury or introduced at trial
12 unless the court first holds a closed hearing and determines that the evidence is
13 admissible; requiring the court to enter an order stating which evidence may be
14 introduced under certain circumstances; authorizing the court to reconsider a
15 ruling excluding evidence and hold an additional closed hearing if new
16 information is discovered during the trial that may make the evidence
17 admissible; defining certain terms; providing for the construction and
18 application of this Act; and generally relating to the admissibility of evidence in
19 criminal proceedings.

20 BY adding to

21 Article – Courts and Judicial Proceedings
22 Section 10–916.1
23 Annotated Code of Maryland
24 (2006 Replacement Volume and 2007 Supplement)

25 BY repealing and reenacting, without amendments,

26 Article – Criminal Law
27 Section 1–101(g)
28 Annotated Code of Maryland
29 (2002 Volume and 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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:

8 (I) A PRIOR CONVICTION OF § 3-602 OF THE CRIMINAL
9 LAW ARTICLE THAT OCCURRED WITHIN 10 YEARS OF THE OFFENSE FOR WHICH
10 THE DEFENDANT IS NOW CHARGED;

11 (II) A PRIOR CONVICTION OF FORMER ARTICLE 27, § 35C
12 OF THE CODE OCCURRING BEFORE OCTOBER 1, 2002, THAT INVOLVED SEXUAL
13 ABUSE OF A MINOR AND OCCURRED WITHIN 10 YEARS OF THE OFFENSE FOR
14 WHICH THE DEFENDANT IS NOW CHARGED;

15 (III) EXCEPT FOR A CONVICTION OF § 3-308 OF THE
16 CRIMINAL LAW ARTICLE, A PRIOR CONVICTION OF TITLE 3, SUBTITLE 3 OF THE
17 CRIMINAL LAW ARTICLE INVOLVING A VICTIM WHO IS A MINOR THAT
18 OCCURRED WITHIN 10 YEARS OF THE OFFENSE FOR WHICH THE DEFENDANT IS
19 NOW CHARGED; OR

20 (IV) A PRIOR CONVICTION OF FEDERAL LAW OR THE LAW OF
21 ANOTHER STATE THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE ANY
22 OF THE CRIMES SPECIFIED IN ITEMS (I) THROUGH (III) OF THIS PARAGRAPH
23 THAT OCCURRED WITHIN 10 YEARS OF THE OFFENSE FOR WHICH THE
24 DEFENDANT IS NOW CHARGED.

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

27 (B) THIS SECTION DOES NOT APPLY TO A PROSECUTION FOR A
28 VIOLATION OF § 3-308 OF THE CRIMINAL LAW ARTICLE.

29 (C) SUBJECT TO SUBSECTION (E) OF THIS SECTION, IN A PROSECUTION
30 FOR A VIOLATION OF § 3-602 OF THE CRIMINAL LAW ARTICLE OR A VIOLATION
31 OF TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE INVOLVING A VICTIM
32 WHO IS A MINOR, EVIDENCE OF THE DEFENDANT’S CONVICTION OF A SEPARATE

1 ACT OF SEXUAL MISCONDUCT INVOLVING A MINOR IS ADMISSIBLE IF THE COURT
2 FINDS THAT THE PROBATIVE VALUE OF THE EVIDENCE IS NOT SUBSTANTIALLY
3 OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE AGAINST THE
4 DEFENDANT.

5 (D) (1) IF THE STATE INTENDS TO OFFER EVIDENCE UNDER THIS
6 SECTION, THE STATE'S ATTORNEY SHALL DISCLOSE THE EVIDENCE TO THE
7 DEFENDANT AT LEAST 15 DAYS BEFORE THE SCHEDULED DATE OF TRIAL,
8 UNLESS THE COURT ALLOWS DISCLOSURE AT A LATER TIME FOR GOOD CAUSE
9 SHOWN.

10 (2) THE DISCLOSURE SHALL INCLUDE STATEMENTS OF
11 WITNESSES OR A SUMMARY OF THE SUBSTANCE OF ANY TESTIMONY THAT THE
12 STATE EXPECTS TO OFFER.

13 (E) (1) EVIDENCE DESCRIBED IN SUBSECTION (C) OF THIS SECTION
14 MAY NOT BE REFERRED TO IN A STATEMENT TO A JURY OR INTRODUCED IN A
15 TRIAL UNLESS THE COURT FIRST HOLDS A CLOSED HEARING AND DETERMINES
16 THAT THE EVIDENCE IS ADMISSIBLE.

17 (2) IF THE COURT DETERMINES THAT ALL OR SOME OF THE
18 EVIDENCE IS ADMISSIBLE, THE COURT SHALL ENTER AN ORDER STATING WHICH
19 EVIDENCE MAY BE INTRODUCED.

20 (3) THE COURT MAY RECONSIDER A RULING EXCLUDING THE
21 EVIDENCE AND HOLD AN ADDITIONAL CLOSED HEARING IF NEW INFORMATION
22 IS DISCOVERED DURING THE COURSE OF THE TRIAL THAT MAY MAKE THE
23 EVIDENCE ADMISSIBLE.

24 (F) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE ADMISSION
25 OR CONSIDERATION OF EVIDENCE UNDER ANY OTHER RULE OR PROVISION OF
26 LAW.

27 Article - Criminal Law

28 1-101.

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

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

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2008.