

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 425
Judiciary

(Delegate Shank)

Evidence - Separate Act of Sexual Misconduct Involving a Minor - Admissibility

This bill allows evidence of a specified prior “act of sexual misconduct involving a minor” to be admitted into evidence in the trial of a defendant charged with specified acts of sexual misconduct involving a minor, if the court finds the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice against the defendant, and certain other conditions are met.

Fiscal Summary

State Effect: None. The bill is not expected to result in new prosecutions and thus is not expected to have a significant impact on the District Court’s or the Office of the Public Defender’s workload or finances.

Local Effect: None. The bill is not expected to result in new prosecutions and thus is not expected to have a significant impact on the circuit courts’ or State’s Attorneys’ workload or finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill defines act of sexual misconduct involving a minor as a prior conviction of sexual abuse of a minor and any other sexual offense in which the victim was a minor, including first and second degree rape; a first, second, or third degree sexual offense; attempted first or second degree rape or an attempted first or second degree sexual offense; sexual conduct between a correctional or Department of Juvenile Justice employee and an inmate or confined child; continuing course of conduct with a child;

unnatural or perverted sexual practice; sodomy; and incest. The bill specifically excludes fourth degree sexual offenses.

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 has held a closed hearing and found it to be admissible.

Current Law: The Maryland Rules generally follow the Federal Rules of Evidence (FRE). Maryland Rule 5-404(b), which is identical to FRE 404(b), excludes from trial evidence of a defendant's prior crimes, wrongs, or acts, where this evidence is offered to show action that conforms to these 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.

Background: The common law "propensity rule," which dates back to the 17th century, prohibits the use of character evidence to show a person's propensity to act in accordance with their 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).

Additional Information

Prior Introductions: SB 61 of 2007, a similar bill, passed the Senate and received a hearing in the House Judiciary Committee but no further action was taken.

Cross File: None.

Information Source(s): State's Attorneys' Association, Department of Legislative Services

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mcp/jr

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