

# SENATE BILL 235

E2, E1

6lr1016

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By: **Senators Brochin, Cassilly, Raskin, ~~and Ready~~ Lee, McFadden, Muse, Ramirez, and Ready**

Introduced and read first time: January 22, 2016

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 2016

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Courts – Evidence of ~~Prior Sexual Offense~~ Sexually Assaultive Behavior –**  
3 **Admissibility**

4 FOR the purpose of ~~prohibiting~~ providing that, in a prosecution for certain sexual offenses,  
5 ~~the court from barring the introduction of certain~~ evidence that the defendant  
6 committed a certain ~~prior sexual offense on the ground that the admission is unfairly~~  
7 ~~prejudicial unless the court makes a certain finding; prohibiting a court from finding~~  
8 ~~that certain evidence is unduly prejudicial solely because it involves a prior sexual~~  
9 ~~offense;~~ sexually assaultive behavior may be admissible for certain reasons;  
10 requiring that the State file a certain motion to introduce evidence of certain sexually  
11 assaultive behavior within a certain period of time; requiring a motion to include  
12 certain information; requiring a court to hold a hearing on a motion outside the  
13 presence of a jury; authorizing the court to admit certain evidence if the court makes  
14 certain findings; providing factors that a court shall consider; ~~prohibiting a State's~~  
15 ~~Attorney from introducing certain evidence under certain circumstances; prohibiting~~  
16 ~~certain evidence from being disclosed to a jury or introduced at trial unless the court~~  
17 ~~has held a certain hearing and made certain determinations; requiring a court to~~  
18 ~~state the reasons for a certain decision in a certain manner;~~ providing that this Act  
19 does not limit the admission or consideration of certain evidence; defining a certain  
20 term; and generally relating to the admissibility of evidence.

21 BY adding to

22 Article – Courts and Judicial Proceedings

23 Section 10–923

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland  
2 (2013 Replacement Volume and 2015 Supplement)

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

5 **Article – Courts and Judicial Proceedings**

6 **10-923.**

7 (A) IN THIS SECTION, “~~PRIOR SEXUAL OFFENSE~~ SEXUALLY ASSAULTIVE  
8 BEHAVIOR” MEANS AN ACT THAT WOULD CONSTITUTE:

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

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

13 (3) SEXUAL ABUSE OF A VULNERABLE ADULT UNDER § 3-604 OF THE  
14 CRIMINAL LAW ARTICLE;

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

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

19 (B) ~~(1) IN A CRIMINAL TRIAL FOR A SEXUAL OFFENSE LISTED IN~~  
20 ~~SUBSECTION (A)(1), (2), OR (3) OF THIS SECTION, A COURT MAY NOT BAR THE~~  
21 ~~INTRODUCTION OF OTHERWISE ADMISSIBLE EVIDENCE THAT THE DEFENDANT~~  
22 ~~COMMITTED A PRIOR SEXUAL OFFENSE ON THE GROUND THAT THE EVIDENCE IS~~  
23 ~~UNFAIRLY PREJUDICIAL TO A DEFENDANT UNLESS THE COURT MAKES A SPECIFIC~~  
24 ~~FINDING ON THE RECORD AFTER CONSIDERING THE FACTORS LISTED IN~~  
25 ~~SUBSECTION (D)(1) OF THIS SECTION~~ EVIDENCE OF OTHER SEXUALLY ASSAULTIVE  
26 BEHAVIOR BY THE DEFENDANT OCCURRING BEFORE OR AFTER THE OFFENSE FOR  
27 WHICH THE DEFENDANT IS ON TRIAL MAY BE ADMISSIBLE.

28 ~~(2) A COURT MAY NOT FIND THAT EVIDENCE IS UNFAIRLY~~  
29 ~~PREJUDICIAL UNDER THIS SUBSECTION SOLELY BECAUSE THE EVIDENCE INVOLVES~~  
30 ~~A PRIOR SEXUAL OFFENSE.~~

31 ~~(C) A STATE’S ATTORNEY MAY NOT INTRODUCE EVIDENCE UNDER THIS~~  
32 ~~SECTION UNLESS THE EVIDENCE WAS DISCLOSED TO THE DEFENDANT AT LEAST 30~~

~~1 DAYS BEFORE THE TRIAL OR AT A LATER TIME IF AUTHORIZED BY THE COURT FOR  
2 GOOD CAUSE SHOWN.~~

~~3 (D) (1) EVIDENCE OF A PRIOR SEXUAL OFFENSE MAY NOT BE DISCLOSED  
4 TO A JURY OR INTRODUCED AT TRIAL UNLESS:~~

~~5 (I) THE COURT HAS FIRST HELD A CLOSED HEARING AND  
6 DETERMINED THAT THE EVIDENCE OF THE PRIOR SEXUAL OFFENSE WAS PROVEN BY  
7 CLEAR AND CONVINCING EVIDENCE;~~

~~8 (II) THE COURT HAS USED THE BALANCING TEST REQUIRED  
9 UNDER MARYLAND RULE 5-403; AND~~

~~10 (III) THE COURT HAS CONSIDERED:~~

~~11 1. THE SIMILARITY BETWEEN THE PRIOR SEXUAL  
12 OFFENSE AND THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL;~~

~~13 2. THE CLOSENESS IN TIME OF THE PRIOR SEXUAL  
14 OFFENSE AND THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL;~~

~~15 3. THE PRESENCE OR LACK OF INTERVENING EVENTS  
16 BETWEEN THE PRIOR SEXUAL OFFENSE AND THE SEXUAL OFFENSE FOR WHICH THE  
17 DEFENDANT IS ON TRIAL;~~

~~18 4. THE NEED FOR THE EVIDENCE; AND~~

~~19 5. ANY OTHER FACTOR THAT THE COURT CONSIDERS  
20 RELEVANT.~~

~~21 (2) AT THE CONCLUSION OF A HEARING UNDER THIS SUBSECTION,  
22 THE COURT SHALL STATE THE REASONS FOR THE COURT'S DECISION ON THE  
23 RECORD IN OPEN COURT AND OUTSIDE THE PRESENCE OF THE JURY.~~

~~24 (C) (1) THE STATE SHALL FILE A MOTION OF INTENT TO INTRODUCE  
25 EVIDENCE OF SEXUALLY ASSAULTIVE BEHAVIOR AT LEAST 90 DAYS BEFORE TRIAL  
26 OR AT A LATER TIME IF AUTHORIZED BY THE COURT FOR GOOD CAUSE.~~

~~27 (2) A MOTION FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION  
28 SHALL INCLUDE A DESCRIPTION OF THE EVIDENCE.~~

~~29 (3) THE STATE SHALL PROVIDE A COPY OF A MOTION FILED UNDER  
30 PARAGRAPH (1) OF THIS SUBSECTION TO THE DEFENDANT AND INCLUDE ANY OTHER~~

1 INFORMATION REQUIRED TO BE DISCLOSED UNDER MARYLAND RULE 4-262 OR  
2 4-263.

3 (D) THE COURT SHALL HOLD A HEARING OUTSIDE THE PRESENCE OF A  
4 JURY TO DETERMINE THE ADMISSIBILITY OF EVIDENCE OF SEXUALLY ASSAULTIVE  
5 BEHAVIOR.

6 (E) THE COURT MAY ADMIT EVIDENCE OF SEXUALLY ASSAULTIVE  
7 BEHAVIOR IF THE COURT FINDS AND STATES ON THE RECORD THAT:

8 (1) THE EVIDENCE IS BEING OFFERED TO:

9 (I) PROVE LACK OF CONSENT; OR

10 (II) REBUT AN EXPRESS OR IMPLIED ALLEGATION THAT A  
11 MINOR VICTIM FABRICATED THE SEXUAL OFFENSE;

12 (2) THE SEXUALLY ASSAULTIVE BEHAVIOR WAS PROVEN BY CLEAR  
13 AND CONVINCING EVIDENCE; AND

14 (3) THE PROBATIVE VALUE OF THE EVIDENCE IS NOT  
15 SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE.

16 (F) BEFORE MAKING THE FINDINGS UNDER SUBSECTION (E) OF THIS  
17 SECTION, THE COURT SHALL CONSIDER:

18 (1) WHETHER THE ISSUE FOR WHICH THE EVIDENCE OF THE  
19 SEXUALLY ASSAULTIVE BEHAVIOR IS BEING OFFERED IS IN DISPUTE;

20 (2) THE SIMILARITY BETWEEN THE SEXUALLY ASSAULTIVE  
21 BEHAVIOR AND THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL;

22 (3) THE CLOSENESS IN TIME OF THE SEXUALLY ASSAULTIVE  
23 BEHAVIOR AND THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL;  
24 AND

25 (4) THE INDEPENDENCE OF THE SEXUALLY ASSAULTIVE BEHAVIOR  
26 FROM THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL.

27 ~~(E)~~ (G) THIS SECTION DOES NOT LIMIT THE ADMISSION OR  
28 CONSIDERATION OF EVIDENCE UNDER ANY MARYLAND RULE OR OTHER PROVISION  
29 OF LAW.

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