

# HOUSE BILL 353

E1  
HB 369/17 – JUD

8lr0134  
CF SB 298

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By: **The Speaker (By Request – Administration) and Delegates Adams, Afzali, Anderton, Arentz, Aumann, Beitzel, Buckel, Carozza, Cassilly, Ciliberti, Clark, Corderman, Fisher, Flanagan, Folden, Ghrist, Glass, Grammer, Hornberger, S. Howard, Impallaria, Jacobs, Kipke, Kittleman, Krebs, Malone, Mautz, McComas, McConkey, McDonough, McKay, McMillan, Metzgar, Miele, Morgan, Otto, Parrott, Reilly, Rey, Rose, Saab, Shoemaker, Szeliga, Vogt, West, and Wivell**

Introduced and read first time: January 23, 2018

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Evidence of Sexually Assaultive Behavior – Admissibility**  
3 **(Repeat Sexual Predator Prevention Act)**

4 FOR the purpose of providing that, in a prosecution for certain sexual offenses, evidence  
5 that the defendant committed sexually assaultive behavior at a certain time may be  
6 admissible for certain reasons; requiring that the State file a certain motion to  
7 introduce evidence of certain sexually assaultive behavior at a certain time;  
8 requiring a certain motion to include certain information; requiring the State to  
9 provide a copy of a certain motion to the defendant; requiring a court to hold a  
10 hearing on a motion outside the presence of a jury; authorizing the court to admit  
11 certain evidence if the court makes certain findings; requiring a court to consider  
12 certain factors at a certain time; providing that this Act does not limit the admission  
13 or consideration of certain evidence; defining a certain term; and generally relating  
14 to the 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 2017 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**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **10-923.**

2 (A) IN THIS SECTION, “SEXUALLY ASSAULTIVE BEHAVIOR” MEANS AN ACT  
3 THAT WOULD CONSTITUTE:

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

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

8 (3) SEXUAL ABUSE OF A VULNERABLE ADULT UNDER §  
9 3-604 OF THE CRIMINAL LAW ARTICLE;

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

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

14 (B) IN A CRIMINAL TRIAL FOR A SEXUAL OFFENSE LISTED IN SUBSECTION  
15 (A)(1), (2), OR (3) OF THIS SECTION, EVIDENCE OF OTHER SEXUALLY ASSAULTIVE  
16 BEHAVIOR BY THE DEFENDANT OCCURRING BEFORE OR AFTER THE OFFENSE FOR  
17 WHICH THE DEFENDANT IS ON TRIAL MAY BE ADMISSIBLE.

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

21 (2) A MOTION FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION  
22 SHALL INCLUDE A DESCRIPTION OF THE EVIDENCE.

23 (3) THE STATE SHALL PROVIDE A COPY OF A MOTION FILED UNDER  
24 PARAGRAPH (1) OF THIS SUBSECTION TO THE DEFENDANT AND INCLUDE ANY OTHER  
25 INFORMATION REQUIRED TO BE DISCLOSED UNDER MARYLAND RULE 4-262 OR  
26 4-263.

27 (D) THE COURT SHALL HOLD A HEARING OUTSIDE THE PRESENCE OF A  
28 JURY TO DETERMINE THE ADMISSIBILITY OF EVIDENCE OF SEXUALLY ASSAULTIVE  
29 BEHAVIOR.

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

3           **(1) THE EVIDENCE IS BEING OFFERED TO:**

4                   **(I) PROVE LACK OF CONSENT; OR**

5                   **(II) REBUT AN EXPRESS OR IMPLIED ALLEGATION THAT A**  
6 **MINOR VICTIM FABRICATED THE SEXUAL OFFENSE;**

7           **(2) THE SEXUALLY ASSAULTIVE BEHAVIOR WAS PROVEN BY CLEAR**  
8 **AND CONVINCING EVIDENCE; AND**

9           **(3) THE PROBATIVE VALUE OF THE EVIDENCE IS NOT**  
10 **SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE.**

11           **(F) BEFORE MAKING THE FINDINGS UNDER SUBSECTION (E) OF THIS**  
12 **SECTION, THE COURT SHALL CONSIDER:**

13                   **(1) WHETHER THE ISSUE FOR WHICH THE EVIDENCE OF THE**  
14 **SEXUALLY ASSAULTIVE BEHAVIOR IS BEING OFFERED IS IN DISPUTE;**

15                   **(2) THE SIMILARITY BETWEEN THE SEXUALLY ASSAULTIVE**  
16 **BEHAVIOR AND THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL;**

17                   **(3) THE CLOSENESS IN TIME OF THE SEXUALLY ASSAULTIVE**  
18 **BEHAVIOR AND THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL;**  
19 **AND**

20                   **(4) THE INDEPENDENCE OF THE SEXUALLY ASSAULTIVE BEHAVIOR**  
21 **FROM THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL.**

22           **(G) THIS SECTION DOES NOT LIMIT THE ADMISSION OR CONSIDERATION OF**  
23 **EVIDENCE UNDER ANY MARYLAND RULE OR OTHER PROVISION OF LAW.**

24           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
25 1, 2018.