

**CITY OF BALTIMORE
COUNCIL BILL 16-0295R
(Resolution)**

Introduced by: Councilmembers Clarke, Henry, President Young, Councilmembers Scott, Costello, Middleton, Stokes, Kraft, Holton, Reisinger, Mosby, Branch, Welch, Spector, Curran

Introduced and adopted: March 7, 2016

A COUNCIL RESOLUTION CONCERNING

Request for State Action – Admission of Prior Evidence in Sexual Assault Prosecutions

FOR the purpose of calling on the General Assembly to enact, and the Governor to sign, HB 218/SB235, or similar legislation, to adopt a new evidentiary standard in sexual assault cases that would allow for the introduction of relevant prior conduct evidence against perpetrators, just as current law allows for the introduction of some prior conduct evidence against victims.

Recitals

Sexual assault cases involve some of our society's most heinous crimes, and are often among the most difficult to successfully prosecute. This is especially true when a case turns on a question of whether an accuser's version of what happened is more creditable than the story told by the accused.

The special features of sexual assault cases, where the accused and accuser may be the only witnesses and physical evidence is often not conclusive as to whether or not the contact was consensual, require a different balancing of the factors affecting the admissibility of evidence that could bear on the all-important credibility question than is called for in a simple assault case. Recognizing this, Maryland criminal law has special evidentiary rules relating to admissibility of sexual conduct evidence against the alleged victim of a sexual assault that take these special circumstances into account.

However, prosecutors seeking to introduce similar conduct evidence against an alleged perpetrator, for instance - evidence of past sexual assaults, are forced to operate under the same rules that would apply to a garden variety fist-fight. This unbalanced approach often raises a hurdle too high for prosecutors to clear, and creates a deeply inequitable situation where sexual conduct evidence can be introduced to impeach a victim of sexual assault, but not a perpetrator. Far too often rapists go free because of this biased inequity.

Justice demands that a way out of this situation be found through modification of Maryland law. The Federal Rules of Evidence allow prosecutors in federal court to introduce certain evidence of the accused's prior conduct and more than ten other states have passed similar legislation balancing the evidentiary rules. The proposed changes to the evidentiary rules in HB 218/SB235 would strike the proper balance here as well.

Adopting this balanced approach would ensure that both the prosecution and defense would have opportunities to support their version of what happened by presenting evidence of other

EXPLANATION: Underlining indicates matter added by amendment.
~~Strike out~~ indicates matter deleted by amendment.

Council Bill 16-0295R

1 relevant conduct. Continuing under the current flawed system is simply unfair, and deprives
2 jurors of the opportunity to learn all the information relevant to their decisions, allowing sexual
3 assault victims to be victimized all over again by the criminal justice system and rapists to be
4 freed to strike again.

5 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF BALTIMORE,** That the
6 Council calls on the General Assembly to enact, and the Governor to sign, HB 218/SB235, or
7 similar legislation, to adopt a new evidentiary standard in sexual assault cases that would allow
8 for the introduction of relevant prior conduct evidence against perpetrators, just as current law
9 allows for the introduction of some prior conduct evidence against victims.

10 **AND BE IT FURTHER RESOLVED,** That a copy of this Resolution be sent to the Governor, the
11 Honorable Chairs and Members of the Baltimore City House and Senate Delegations to the
12 Maryland General Assembly, the President of the Maryland Senate, the Maryland House
13 Speaker, the Mayor, and the Mayor’s Legislative Liaison to the City Council.