

SENATE BILL 574

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7lr2223
CF HB 428

By: Senators Feldman, Lee, Astle, Benson, Cassilly, Conway, Currie, DeGrange, Eckardt, Edwards, Ferguson, Guzzone, Jennings, Kagan, Kelley, King, Klausmeier, Madaleno, Manno, Mathias, McFadden, Middleton, Muse, Nathan-Pulliam, Norman, Peters, Pinsky, Ramirez, Ready, Robinson, Rosapepe, Salling, Serafini, Smith, Young, and Zucker

Introduced and read first time: February 2, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law – Child Conceived Without Consent – Termination of Parental**
3 **Rights**
4 **(Rape Survivor Family Protection Act)**

5 FOR the purpose of authorizing a court, under certain circumstances, to terminate the
6 parental rights of an individual convicted of or found to have committed an act of
7 nonconsensual sexual conduct against the other parent that resulted in the
8 conception of a child; prohibiting the court from terminating parental rights under
9 certain circumstances; specifying that a termination of parental rights under this
10 Act terminates completely certain rights and responsibilities of a parent; specifying
11 certain procedures for an action for termination of parental rights under this Act;
12 authorizing the court to order certain means of service under certain circumstances;
13 requiring the court to rule on a certain motion within a certain period of time;
14 prohibiting the court from requiring publication of the name or personally
15 identifying information of the petitioner or the child; requiring the court to hold a
16 trial on termination of parental rights within a certain period of time after an answer
17 to the complaint is filed; authorizing the court to stay further proceedings in a
18 termination of parental rights action until a certain criminal proceeding is resolved
19 under certain circumstances; authorizing a respondent in a termination of parental
20 rights action to refuse to testify or to offer evidence that may incriminate the
21 respondent; specifying that no adverse inference may be drawn from the
22 respondent's refusal to testify or to offer evidence; specifying that a party's testimony
23 and certain other information in a termination of parental rights proceeding is
24 inadmissible as evidence in a criminal proceeding against that party under certain
25 circumstances; establishing that a party to a termination of parental rights
26 proceeding is entitled to the assistance of counsel; requiring the court to refer an
27 unrepresented party to the Maryland Legal Services Corporation or its designee for

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



assessment of counsel through a certain program; establishing that a party is not entitled to the assistance of counsel at the expense of the Maryland Legal Services Corporation or its designee unless the party is indigent; defining certain terms; and generally relating to children conceived without consent and termination of parental rights.

BY adding to

Article – Family Law

Section 5–1401 through 5–1405 to be under the new subtitle “Subtitle 14. Child Conceived Without Consent”

Annotated Code of Maryland

(2012 Replacement Volume and 2016 Supplement)

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

Article – Family Law

SUBTITLE 14. CHILD CONCEIVED WITHOUT CONSENT.

5–1401.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “NONCONSENSUAL SEXUAL CONDUCT” MEANS AN ACT THAT IS PROHIBITED UNDER § 3–303, § 3–304(A)(1) OR (2), OR § 3–323 OF THE CRIMINAL LAW ARTICLE.

(C) “RESPONDENT” MEANS THE PERSON AGAINST WHOM AN ACTION FOR TERMINATION OF PARENTAL RIGHTS IS FILED UNDER THIS SUBTITLE.

5–1402.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AFTER A TRIAL, A COURT MAY TERMINATE THE PARENTAL RIGHTS OF A RESPONDENT UNDER THIS SUBTITLE IF THE COURT:

(1) DETERMINES THAT THE RESPONDENT HAS BEEN SERVED IN ACCORDANCE WITH THE MARYLAND RULES;

(2) (I) FINDS THAT THE RESPONDENT HAS BEEN CONVICTED OF AN ACT OF NONCONSENSUAL SEXUAL CONDUCT AGAINST THE OTHER PARENT THAT RESULTED IN THE CONCEPTION OF THE CHILD AT ISSUE IN AN ACTION UNDER THIS SUBTITLE; OR

(II) FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE RESPONDENT COMMITTED AN ACT OF NONCONSENSUAL SEXUAL CONDUCT AGAINST THE OTHER PARENT THAT RESULTED IN THE CONCEPTION OF THE CHILD AT ISSUE IN AN ACTION UNDER THIS SUBTITLE; AND

(3) FINDS BY CLEAR AND CONVINCING EVIDENCE THAT IT IS IN THE BEST INTEREST OF THE CHILD TO TERMINATE THE PARENTAL RIGHTS OF THE RESPONDENT.

(B) THE COURT MAY NOT TERMINATE PARENTAL RIGHTS UNDER SUBSECTION (A) OF THIS SECTION IF THE PARENTS WERE MARRIED AT THE TIME OF THE CONCEPTION OF THE CHILD AT ISSUE, UNLESS:

(1) THE RESPONDENT HAS BEEN CONVICTED OF AN ACT OF NONCONSENSUAL SEXUAL CONDUCT AGAINST THE OTHER PARENT THAT RESULTED IN THE CONCEPTION OF THE CHILD;

(2) THE PARENTS WERE SEPARATED IN ACCORDANCE WITH A PROTECTIVE ORDER DURING THE TIME OF THE CONCEPTION OF THE CHILD AND HAVE REMAINED SEPARATE AND APART SINCE THE TIME OF CONCEPTION; OR

(3) THE PARENTS WERE SEPARATED IN ACCORDANCE WITH A WRITTEN SEPARATION AGREEMENT DURING THE TIME OF THE CONCEPTION OF THE CHILD AND HAVE REMAINED SEPARATE AND APART SINCE THE TIME OF CONCEPTION.

(C) A TERMINATION OF PARENTAL RIGHTS UNDER THIS SECTION TERMINATES COMPLETELY:

(1) A PARENT'S RIGHT TO CUSTODY OF, GUARDIANSHIP OF, ACCESS TO, VISITATION WITH, AND INHERITANCE FROM THE CHILD; AND

(2) A PARENT'S RESPONSIBILITY TO SUPPORT THE CHILD, INCLUDING THE RESPONSIBILITY TO PAY CHILD SUPPORT.

5-1403.

(A) AN ACTION FOR TERMINATION OF PARENTAL RIGHTS UNDER THIS SUBTITLE MAY BE FILED BY EITHER PARENT OF THE CHILD, THE CHILD'S COURT-APPOINTED GUARDIAN, OR THE CHILD'S COURT-APPOINTED ATTORNEY.

(B) (1) AN ACTION FOR TERMINATION OF PARENTAL RIGHTS FILED BY A PARENT UNDER THIS SUBTITLE SHALL BE FILED WITHIN 7 YEARS AFTER THE LATER OF:

(I) THE DATE OF THE BIRTH OF THE CHILD CONCEIVED AS A RESULT OF THE NONCONSENSUAL SEXUAL CONDUCT; OR

(II) THE DATE ON WHICH THE PARENT KNEW OR SHOULD HAVE KNOWN THE OTHER PARENT'S IDENTITY.

(2) AN ACTION FOR TERMINATION OF PARENTAL RIGHTS FILED BY A CHILD'S COURT-APPOINTED GUARDIAN OR ATTORNEY UNDER THIS SUBTITLE SHALL BE FILED BEFORE THE CHILD BECOMES AN ADULT.

(C) A RESPONDENT SHALL FILE AN ANSWER TO A COMPLAINT FILED UNDER THIS SUBTITLE NOT LATER THAN 30 DAYS AFTER SERVICE OF THE COMPLAINT, UNLESS A LONGER PERIOD IS REQUIRED BY FEDERAL LAW.

(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, WHEN PROOF IS MADE BY AFFIDAVIT THAT GOOD FAITH EFFORTS TO SERVE THE RESPONDENT HAVE NOT SUCCEEDED OR THAT THE RESPONDENT HAS ACTED TO EVADE SERVICE, THE COURT MAY ORDER ANY OTHER MEANS OF SERVICE THAT THE COURT CONSIDERS APPROPRIATE UNDER THE CIRCUMSTANCES AND THAT IS REASONABLY CALCULATED TO GIVE ACTUAL NOTICE OF THE PROCEEDING TO THE RESPONDENT.

(2) THE COURT SHALL RULE ON ANY MOTION FOR ALTERNATIVE SERVICE UNDER THIS SUBSECTION WITHIN 15 DAYS AFTER THE FILING OF THE MOTION.

(3) THE COURT MAY NOT REQUIRE PUBLICATION OF THE NAME OF OR PERSONALLY IDENTIFYING INFORMATION ABOUT THE PETITIONER OR THE CHILD.

(E) (1) A SCHEDULING CONFERENCE SHALL BE HELD WITHIN 60 DAYS AFTER SERVICE OF THE COMPLAINT.

(2) AT THE SCHEDULING CONFERENCE, THE COURT:

(I) SHALL ISSUE A SCHEDULING ORDER, TAKING INTO CONSIDERATION THE BEST INTEREST OF THE CHILD, THE TIME NEEDED FOR DISCOVERY, AND THE INTEREST OF JUSTICE; AND

(II) MAY DETERMINE TEMPORARY CUSTODY OF THE MINOR CHILD.

(3) A COMPLAINT FILED UNDER THIS SUBTITLE SHALL INCLUDE A NOTICE TO THE RESPONDENT THAT A SCHEDULING CONFERENCE WILL BE HELD WITHIN 60 DAYS AFTER SERVICE OF THE COMPLAINT.

5-1404.

(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE COURT SHALL HOLD A TRIAL ON TERMINATION OF PARENTAL RIGHTS NOT LATER THAN 180 DAYS AFTER AN ANSWER TO THE COMPLAINT IS FILED.

(2) UNLESS BOTH PARTIES AGREE OTHERWISE OR THE COURT FINDS THAT IT IS IN THE BEST INTEREST OF THE CHILD TO PROCEED, IF A CRIMINAL PROCEEDING INVOLVING THE SAME UNDERLYING FACTS IS PENDING AT THE TIME AN ACTION TO TERMINATE PARENTAL RIGHTS UNDER THIS SUBTITLE IS FILED, OR IF A CRIMINAL PROCEEDING INVOLVING THE SAME UNDERLYING FACTS IS COMMENCED AFTER AN ACTION TO TERMINATE PARENTAL RIGHTS UNDER THIS SUBTITLE IS FILED, THE COURT MAY STAY ALL FURTHER PROCEEDINGS IN THE ACTION TO TERMINATE PARENTAL RIGHTS UNTIL THE CRIMINAL PROCEEDING IS RESOLVED.

(B) IN AN ACTION TO TERMINATE PARENTAL RIGHTS UNDER THIS SUBTITLE:

(1) THE RESPONDENT MAY REFUSE TO TESTIFY OR TO OFFER EVIDENCE THAT MAY INCRIMINATE THE RESPONDENT; AND

(2) NO ADVERSE INFERENCE MAY BE DRAWN FROM THE RESPONDENT'S REFUSAL TO TESTIFY OR TO OFFER EVIDENCE.

(C) A PARTY'S TESTIMONY AND ANY OTHER INFORMATION OBTAINED FROM THE PARTY IN A PROCEEDING UNDER THIS SUBTITLE AND ANY INFORMATION DIRECTLY OR INDIRECTLY DERIVED FROM THE PARTY'S TESTIMONY OR THE OTHER INFORMATION IS INADMISSIBLE AS EVIDENCE IN A CRIMINAL PROCEEDING AGAINST THAT PARTY IF:

(1) THE CRIMINAL PROCEEDING INVOLVES THE SAME UNDERLYING FACTS; AND

(2) THE EVIDENCE IS OFFERED FOR A PURPOSE OTHER THAN IMPEACHMENT.

1 **5-1405.**

2 **(A) A PARTY TO A PROCEEDING UNDER THIS SUBTITLE IS ENTITLED TO THE**
3 **ASSISTANCE OF COUNSEL.**

4 **(B) (1) THE COURT SHALL REFER AN UNREPRESENTED PARTY TO THE**
5 **MARYLAND LEGAL SERVICES CORPORATION OR ITS DESIGNEE FOR ASSIGNMENT**
6 **OF COUNSEL THROUGH A QUALIFIED LEGAL SERVICES PROGRAM.**

7 **(2) A PARTY IS NOT ENTITLED TO THE ASSISTANCE OF COUNSEL AT**
8 **THE EXPENSE OF THE MARYLAND LEGAL SERVICES CORPORATION OR ITS**
9 **DESIGNEE UNLESS THE PARTY IS INDIGENT.**

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2017.