

SENATE BILL 78

D4
SB 411/14 – JPR

51r0881
CF 51r0876

By: **Senators Raskin, Astle, Benson, Brochin, Cassilly, Eckardt, Feldman, Ferguson, Guzzone, Hough, Kagan, Kelley, King, Klausmeier, Lee, Madaleno, Manno, Mathias, Middleton, Montgomery, Muse, Nathan–Pulliam, Pinsky, Pugh, Ramirez, Rosapepe, Shank, Simonaire, Young, and Zirkin**

Introduced and read first time: January 23, 2015

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Rape Survivor Family Protection Act**

3 FOR the purpose of excluding as a father of a child a man who has committed a certain
4 sexual crime against the child’s mother for purposes of certain provisions relating to
5 the paternity of a child in a guardianship or adoption proceeding under certain
6 circumstances; requiring a court to consider a certain statement when making a
7 certain finding; prohibiting a court from requiring publication of certain information
8 under certain circumstances; requiring that a certain hearing be held within a
9 certain period of time; authorizing a court to order a man to provide financial support
10 to a child under certain circumstances; prohibiting a court from awarding custody of
11 or visitation with a child to a parent who has committed a certain sexual crime
12 against the other parent under certain circumstances; requiring a court to consider
13 the safety and well–being of the child’s other parent or guardian in approving
14 supervised visitation; and generally relating to adoption, guardianship, custody, and
15 visitation.

16 BY repealing and reenacting, with amendments,
17 Article – Family Law
18 Section 5–306, 5–3A–06, 5–3B–05, and 9–101.2
19 Annotated Code of Maryland
20 (2012 Replacement Volume and 2014 Supplement)

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

23 **Article – Family Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 5-306.

2 (a) Unless a court excludes a man as the father of a child, a man is the father if:

3 (1) the man was married to the child's mother at the time of the child's
4 conception;

5 (2) the man was married to the child's mother at the time of the child's
6 birth;

7 (3) the man is named as the father on the child's birth certificate and has
8 not signed a denial of paternity;

9 (4) the child's mother has named the man as the child's father and the man
10 has not signed a denial of paternity;

11 (5) the man has been adjudicated to be the child's father;

12 (6) the man has acknowledged himself, orally or in writing, to be the child's
13 father and the mother agrees; or

14 (7) on the basis of genetic testing, the man is indicated to be the child's
15 biological father.

16 **(B) (1) ON MOTION OF THE CHILD'S MOTHER, AFTER SERVICE OF A**
17 **MOTION THAT IS IN ACCORDANCE WITH THE MARYLAND RULES AND IS REASONABLY**
18 **CALCULATED TO GIVE ACTUAL NOTICE AND AFTER A HEARING, A COURT SHALL**
19 **EXCLUDE A MAN AS THE FATHER OF A CHILD IF THE COURT:**

20 **(I) FINDS BY CLEAR AND CONVINCING EVIDENCE THAT:**

21 **1. A. THE MAN HAS COMMITTED AN ACT AGAINST THE**
22 **CHILD'S MOTHER THAT IS PROHIBITED BY § 3-303, § 3-304(A)(1) OR (2), OR § 3-323**
23 **OF THE CRIMINAL LAW ARTICLE OR, IF THE MOTHER IS UNDER THE AGE OF 16**
24 **YEARS AT THE TIME OF THE ACT, § 3-602 OF THE CRIMINAL LAW ARTICLE; OR**

25 **B. THE MAN HAS COMMITTED AN ACT IN ANOTHER**
26 **JURISDICTION THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE THAT ACT;**
27 **AND**

28 **2. THE CHILD WAS CONCEIVED AS A RESULT OF THE ACT;**
29 **AND**

30 **(II) FINDS THAT IT IS IN THE BEST INTEREST OF THE CHILD FOR**
31 **THE MAN TO BE EXCLUDED AS THE CHILD'S FATHER.**

1 **(2) IN MAKING A FINDING UNDER PARAGRAPH (1) OF THIS**
2 **SUBSECTION, IN ADDITION TO ANY OTHER RELEVANT EVIDENCE, THE COURT SHALL**
3 **CONSIDER A PRIOR STATEMENT REGARDING THE CIRCUMSTANCES OF THE CHILD’S**
4 **CONCEPTION MADE BY THE CHILD’S MOTHER TO LAW ENFORCEMENT, CHILD**
5 **PROTECTIVE SERVICES, OR ANY OTHER THIRD PARTY DEEMED RELIABLE BY THE**
6 **COURT.**

7 **(3) (I) FOR PURPOSES OF SERVICE OF THE MOTION DESCRIBED IN**
8 **PARAGRAPH (1) OF THIS SUBSECTION, THE COURT MAY NOT REQUIRE PUBLICATION**
9 **OF THE MOTHER’S NAME OR OTHER PERSONAL IDENTIFYING INFORMATION.**

10 **(II) A HEARING UNDER PARAGRAPH (1) OF THIS SUBSECTION**
11 **SHALL BE HELD WITHIN 30 DAYS AFTER SERVICE OF THE MOTION.**

12 **(4) IF THE COURT EXCLUDES A MAN AS A FATHER OF A CHILD UNDER**
13 **THIS SUBSECTION, THE COURT MAY ORDER THE MAN TO PROVIDE FINANCIAL**
14 **SUPPORT TO THE CHILD IN ACCORDANCE WITH TITLE 10 OF THIS ARTICLE OR**
15 **OTHERWISE.**

16 **[(b)] (C) (1) A petitioner under Part II or Part III of this subtitle shall give a**
17 **juvenile court notice that a man who is not named in the petition and has not been excluded**
18 **as a father claims paternity.**

19 **(2) After a request of a party or claimant and before ruling on a petition**
20 **under Part II or Part III of this subtitle, a juvenile court shall hold a hearing on the issue**
21 **of paternity.**

22 5-3A-06.

23 **(a) Unless a court excludes a man as the father of a child, a man is the father if:**

24 **(1) the man was married to the child’s mother at the time of the child’s**
25 **conception;**

26 **(2) the man was married to the child’s mother at the time of the child’s**
27 **birth;**

28 **(3) the man is named as the father on the child’s birth certificate and has**
29 **not signed a denial of paternity;**

30 **(4) the child’s mother has named the man as the child’s father and the man**
31 **has not signed a denial of paternity;**

32 **(5) the man has been adjudicated to be the child’s father;**

1 (6) the man has acknowledged himself, orally or in writing, to be the child's
2 father and the mother agrees; or

3 (7) on the basis of genetic testing, the man is indicated to be the child's
4 biological father.

5 **(B) (1) ON MOTION OF THE CHILD'S MOTHER, AFTER SERVICE OF A**
6 **MOTION THAT IS IN ACCORDANCE WITH THE MARYLAND RULES AND IS REASONABLY**
7 **CALCULATED TO GIVE ACTUAL NOTICE AND AFTER A HEARING, A COURT SHALL**
8 **EXCLUDE A MAN AS THE FATHER OF A CHILD IF THE COURT:**

9 **(I) FINDS BY CLEAR AND CONVINCING EVIDENCE THAT:**

10 **1. A. THE MAN HAS COMMITTED AN ACT AGAINST THE**
11 **CHILD'S MOTHER THAT IS PROHIBITED BY § 3-303, § 3-304(A)(1) OR (2), OR § 3-323**
12 **OF THE CRIMINAL LAW ARTICLE OR, IF THE MOTHER IS UNDER THE AGE OF 16**
13 **YEARS AT THE TIME OF THE ACT, § 3-602 OF THE CRIMINAL LAW ARTICLE; OR**

14 **B. THE MAN HAS COMMITTED AN ACT IN ANOTHER**
15 **JURISDICTION THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE THAT ACT;**
16 **AND**

17 **2. THE CHILD WAS CONCEIVED AS A RESULT OF THE ACT;**
18 **AND**

19 **(II) FINDS THAT IT IS IN THE BEST INTEREST OF THE CHILD FOR**
20 **THE MAN TO BE EXCLUDED AS THE CHILD'S FATHER.**

21 **(2) IN MAKING A FINDING UNDER PARAGRAPH (1) OF THIS**
22 **SUBSECTION, IN ADDITION TO ANY OTHER RELEVANT EVIDENCE, THE COURT SHALL**
23 **CONSIDER A PRIOR STATEMENT REGARDING THE CIRCUMSTANCES OF THE CHILD'S**
24 **CONCEPTION MADE BY THE CHILD'S MOTHER TO LAW ENFORCEMENT, CHILD**
25 **PROTECTIVE SERVICES, OR ANY OTHER THIRD PARTY DEEMED RELIABLE BY THE**
26 **COURT.**

27 **(3) (I) FOR PURPOSES OF SERVICE OF THE MOTION DESCRIBED IN**
28 **PARAGRAPH (1) OF THIS SUBSECTION, THE COURT MAY NOT REQUIRE PUBLICATION**
29 **OF THE MOTHER'S NAME OR OTHER PERSONAL IDENTIFYING INFORMATION.**

30 **(II) A HEARING UNDER PARAGRAPH (1) OF THIS SUBSECTION**
31 **SHALL BE HELD WITHIN 30 DAYS AFTER SERVICE OF THE MOTION.**

1 **(4) IF THE COURT EXCLUDES A MAN AS A FATHER OF A CHILD UNDER**
2 **THIS SUBSECTION, THE COURT MAY ORDER THE MAN TO PROVIDE FINANCIAL**
3 **SUPPORT TO THE CHILD IN ACCORDANCE WITH TITLE 10 OF THIS ARTICLE OR**
4 **OTHERWISE.**

5 **[(b)] (C)** (1) A petitioner under this subtitle shall give a court notice that a
6 man who is not named in the petition and has not been excluded as a father claims
7 paternity.

8 (2) After a request of a party or claimant and before ruling on a petition for
9 guardianship or adoption under this subtitle, a court shall hold a hearing on the issue of
10 paternity.

11 5-3B-05.

12 (a) Unless a court excludes a man as the father of a child, a man is the father if:

13 (1) the man was married to the child's mother at the time of the child's
14 conception;

15 (2) the man was married to the child's mother at the time of the child's
16 birth;

17 (3) the man is named as the father on the child's birth certificate and has
18 not signed a denial of paternity;

19 (4) the child's mother has named the man as the child's father and the man
20 has not signed a denial of paternity;

21 (5) the man has been adjudicated to be the child's father;

22 (6) the man has acknowledged himself, orally or in writing, to be the child's
23 father and the mother agrees; or

24 (7) on the basis of genetic testing, the man is indicated to be the child's
25 biological father.

26 **(B) (1) ON MOTION OF THE CHILD'S MOTHER, AFTER SERVICE OF A**
27 **MOTION THAT IS IN ACCORDANCE WITH THE MARYLAND RULES AND IS REASONABLY**
28 **CALCULATED TO GIVE ACTUAL NOTICE AND AFTER A HEARING, A COURT SHALL**
29 **EXCLUDE A MAN AS THE FATHER OF A CHILD IF THE COURT:**

30 **(I) FINDS BY CLEAR AND CONVINCING EVIDENCE THAT:**

31 **1. A. THE MAN HAS COMMITTED AN ACT AGAINST THE**
32 **CHILD'S MOTHER THAT IS PROHIBITED BY § 3-303, § 3-304(A)(1) OR (2), OR § 3-323**

1 OF THE CRIMINAL LAW ARTICLE OR, IF THE MOTHER IS UNDER THE AGE OF 16
2 YEARS AT THE TIME OF THE ACT, § 3-602 OF THE CRIMINAL LAW ARTICLE; OR

3 B. THE MAN HAS COMMITTED AN ACT IN ANOTHER
4 JURISDICTION THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE THAT ACT;
5 AND

6 2. THE CHILD WAS CONCEIVED AS A RESULT OF THE ACT;
7 AND

8 (II) FINDS THAT IT IS IN THE BEST INTEREST OF THE CHILD FOR
9 THE MAN TO BE EXCLUDED AS THE CHILD'S FATHER.

10 (2) IN MAKING A FINDING UNDER PARAGRAPH (1) OF THIS
11 SUBSECTION, IN ADDITION TO ANY OTHER RELEVANT EVIDENCE, THE COURT SHALL
12 CONSIDER A PRIOR STATEMENT REGARDING THE CIRCUMSTANCES OF THE CHILD'S
13 CONCEPTION MADE BY THE CHILD'S MOTHER TO LAW ENFORCEMENT, CHILD
14 PROTECTIVE SERVICES, OR ANY OTHER THIRD PARTY DEEMED RELIABLE BY THE
15 COURT.

16 (3) (I) FOR PURPOSES OF SERVICE OF THE MOTION DESCRIBED IN
17 PARAGRAPH (1) OF THIS SUBSECTION, THE COURT MAY NOT REQUIRE PUBLICATION
18 OF THE MOTHER'S NAME OR OTHER PERSONAL IDENTIFYING INFORMATION.

19 (II) A HEARING UNDER PARAGRAPH (1) OF THIS SUBSECTION
20 SHALL BE HELD WITHIN 30 DAYS AFTER SERVICE OF THE MOTION.

21 (4) IF THE COURT EXCLUDES A MAN AS A FATHER OF A CHILD UNDER
22 THIS SUBSECTION, THE COURT MAY ORDER THE MAN TO PROVIDE FINANCIAL
23 SUPPORT TO THE CHILD IN ACCORDANCE WITH TITLE 10 OF THIS ARTICLE OR
24 OTHERWISE.

25 [(b)] (C) (1) A petitioner under this subtitle shall give a court notice that a
26 man who is not named in the petition and has not been excluded as a father claims
27 paternity.

28 (2) After a request of a party or claimant and before ruling on a petition for
29 adoption under this subtitle, a court shall hold a hearing on the issue of paternity.

30 9-101.2.

31 (a) Except as provided in subsection (b) of this section, unless good cause for the
32 award of custody or visitation is shown by clear and convincing evidence, a court may not
33 award custody of a child or visitation with a child:

1 (1) to a parent who has been found by a court of this State to be guilty of
2 first degree or second degree murder of the other parent of the child, another child of the
3 parent, or any family member residing in the household of either parent of the child; [or]

4 (2) to a parent who has been found by a court of any state or of the United
5 States to be guilty of a crime that, if committed in this State, would be first degree murder
6 or second degree murder of the other parent of the child, another child of the parent, or any
7 family member residing in the household of either parent of the child; OR

8 **(3) TO A PARENT IF THE COURT FINDS BY CLEAR AND CONVINCING**
9 **EVIDENCE THAT:**

10 **(I) 1. THE PARENT HAS COMMITTED AN ACT AGAINST THE**
11 **OTHER PARENT THAT IS PROHIBITED BY § 3-303, § 3-304(A)(1) OR (2), OR § 3-323**
12 **OF THE CRIMINAL LAW ARTICLE OR, IF THE OTHER PARENT IS UNDER THE AGE OF**
13 **16 YEARS AT THE TIME OF THE ACT, § 3-602 OF THE CRIMINAL LAW ARTICLE; OR**

14 **2. THE PARENT HAS COMMITTED AN ACT IN ANOTHER**
15 **JURISDICTION THAT, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE THAT ACT;**
16 **AND**

17 **(II) THE CHILD WAS CONCEIVED AS A RESULT OF THE ACT.**

18 (b) If it is in the best interest of the child, the court may approve a supervised
19 visitation arrangement that assures the safety and the physiological, psychological, and
20 emotional well-being of the child AND OF THE CHILD'S OTHER PARENT OR GUARDIAN.

21 **(C) (1) IN MAKING A FINDING UNDER SUBSECTION (A)(3) OF THIS**
22 **SECTION, IN ADDITION TO ANY OTHER RELEVANT EVIDENCE, THE COURT SHALL**
23 **CONSIDER A PRIOR STATEMENT REGARDING THE CIRCUMSTANCES OF THE CHILD'S**
24 **CONCEPTION MADE BY THE CHILD'S MOTHER TO LAW ENFORCEMENT, CHILD**
25 **PROTECTIVE SERVICES, OR ANY OTHER THIRD PARTY DEEMED RELIABLE BY THE**
26 **COURT.**

27 **(2) UNDER THE CIRCUMSTANCES DESCRIBED IN SUBSECTION (A)(3)**
28 **OF THIS SECTION:**

29 **(I) FOR PURPOSES OF SERVICE OF PROCESS, THE COURT MAY**
30 **NOT REQUIRE PUBLICATION OF THE OTHER PARENT'S NAME OR OTHER PERSONAL**
31 **IDENTIFYING INFORMATION; AND**

32 **(II) A HEARING SHALL BE HELD WITHIN 30 DAYS AFTER SERVICE**
33 **OF PROCESS.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2015.