

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 593  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike in their entirety lines 2 and 3 and substitute “Courts and Family Law – Evidence of Sexually Assaultive Behavior and Child Conceived Without Consent”; in line 5, after “of” insert “providing that, in a prosecution for certain sexual offenses, evidence that the defendant committed certain sexually assaultive behavior may be admissible for certain reasons; requiring that the State file a certain motion to introduce evidence of certain sexually assaultive behavior within a certain period of time; requiring a motion to include certain information; requiring a court to hold a hearing on a motion outside the presence of a jury; authorizing the court to admit certain evidence if the court makes certain findings; providing factors that a court shall consider; providing that certain provisions of this Act do not limit the admission or consideration of certain evidence;”; in line 6, after “individual” insert “convicted of or”; in line 7, after “child;” insert “prohibiting the court from terminating parental rights under certain circumstances;”; in line 9, after “rights” insert “and responsibilities”; strike beginning with “authorizing” in line 9 down through “circumstances;” in line 10; in line 11, after “Act;” insert “requiring an action for termination of parental rights under this Act to be filed within a certain period of time; requiring the court to advise the respondent of certain rights at a certain scheduling conference; requiring an action for termination of parental rights under this Act to be stayed under certain circumstances; providing that in an action to terminate parental rights under this Act, a respondent may not be required to testify or to offer evidence that may incriminate the respondent and no adverse inference may be drawn from the respondent’s refusal to testify or to offer evidence;”; strike beginning with “prohibiting” in line 12 down through “child;” in line 14 and substitute “specifying that a party’s testimony and any other information obtained in a certain termination of parental rights proceeding and any information derived from the testimony or other information is inadmissible as evidence in a criminal proceeding against that party under certain circumstances; requiring the

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Office of the Public Defender to represent certain respondents in a proceeding under this Act;; in line 14, after “to” insert “the admissibility of evidence and”; and after line 15, insert:

“BY adding to

Article – Courts and Judicial Proceedings  
Section 10–923  
Annotated Code of Maryland  
(2013 Replacement Volume and 2015 Supplement)

BY repealing and reenacting, with amendments,

Article - Criminal Procedure  
Section 16-204(b)(1)  
Annotated Code of Maryland  
(2008 Replacement Volume and 2015 Supplement)”.

AMENDMENT NO. 2

On page1, after line 23, insert:

“Article – Courts and Judicial Proceedings

10–923.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article – Criminal Procedure

16–204.

(b) (1) Indigent defendants or parties shall be provided representation under this title in:

(i) a criminal or juvenile proceeding in which a defendant or party is alleged to have committed a serious offense;

(ii) a criminal or juvenile proceeding in which an attorney is constitutionally required to be present prior to presentment being made before a commissioner or judge;

(iii) a postconviction proceeding for which the defendant has a right to an attorney under Title 7 of this article;

(iv) any other proceeding in which confinement under a judicial commitment of an individual in a public or private institution may result;

(v) a proceeding involving children in need of assistance under § 3–813 of the Courts Article; [or]

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(vi) a family law proceeding under Title 5, Subtitle 3, Part II or Part III of the Family Law Article, including:

1. for a parent, a hearing in connection with guardianship or adoption;

2. a hearing under § 5-326 of the Family Law Article for which the parent has not waived the right to notice; and

3. an appeal; OR

**(VII) FOR A RESPONDENT, AS DEFINED IN § 5-1401 OF THE FAMILY LAW ARTICLE, A PROCEEDING UNDER TITLE 5, SUBTITLE 14 OF THE FAMILY LAW ARTICLE TO TERMINATE THE RESPONDENT’S PARENTAL RIGHTS.”.**

On page 2, strike in their entirety lines 5 through 12, inclusive; in line 13, strike “(C)” and substitute “(B)”; and strike beginning with “VAGINAL” in line 13 down through “INDIVIDUAL” in line 20 and substitute “AN ACT THAT IS PROHIBITED UNDER § 3-303, § 3-304(A)(1) OR (2), OR § 3-323 OF THE CRIMINAL LAW ARTICLE”.

On pages 2 and 3, strike beginning with “(D)” in line 21 on page 2 down through “(E)” in line 1 on page 3 and substitute “(C)”.

On page 3, strike beginning with “ALLEGED” in line 1 down through “ACTION” in line 3 and substitute “AGAINST WHOM AN ACTION FOR TERMINATION OF PARENTAL RIGHTS IS FILED”; strike in their entirety lines 4 through 12, inclusive; in line 14, strike “AFTER AN EVIDENTIARY HEARING” and substitute “EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AFTER A TRIAL”; in the same line, strike “SHALL” and substitute “MAY”; strike beginning with the colon in line 16 down through “(I)” in line 17; in line 17, after “WITH” insert “RULE 2-121(A)(1) OF”; in the

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same line, strike “AND”; strike in their entirety lines 18 and 19; in line 20, after “(2)” insert “**(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)**”;

in line 24, strike “A PREPONDERANCE OF THE” and substitute “**CLEAR AND CONVINCING**”; in line 27, after “(B)” insert “**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 THE RESPONDENT HAS BEEN CONVICTED OF AN ACT OF NONCONSENSUAL SEXUAL CONDUCT AGAINST THE OTHER PARENT THAT RESULTED IN THE CONCEPTION OF THE CHILD.**

**(C)**”;

in line 28, after “COMPLETELY” insert “:

**(1)**”;

and in line 29, after “CHILD” insert “**;**AND

**(2) A PARENT’S RESPONSIBILITY TO SUPPORT THE CHILD, INCLUDING THE RESPONSIBILITY TO PAY CHILD SUPPORT**”.

On page 4, strike in their entirety lines 1 through 6, inclusive; strike beginning with the first comma in line 10 down through “GUARDIAN” in line 11; in line 12, after

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“COMPLAINT” insert “IN THE CIRCUIT COURT HAVING JURISDICTION OVER THE CHILD”; after line 12, insert:

“(B) AN ACTION FOR TERMINATION OF PARENTAL RIGHTS UNDER THIS SUBTITLE SHALL BE FILED WITHIN 5 YEARS AFTER THE DATE ON WHICH THE ALLEGED ACT OF NONCONSENSUAL SEXUAL CONDUCT THAT RESULTED IN CONCEPTION OF THE CHILD AT ISSUE OCCURRED.”;

in lines 13, 15, and 26, strike “(B)”, “(C)”, and “(D)”, respectively, and substitute “(C)”, “(D)”, and “(E)”, respectively; strike beginning with “WITHIN” in line 15 down through the period in line 25 and substitute “IN ACCORDANCE WITH THE MARYLAND RULES.”

(2) AT THE SCHEDULING CONFERENCE, THE COURT SHALL ADVISE THE RESPONDENT THAT:

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

(II) NO ADVERSE INFERENCE MAY BE DRAWN FROM THE RESPONDENT’S REFUSAL TO TESTIFY OR TO OFFER EVIDENCE.”;

in line 26, strike “UNLESS IT IS CONTRARY TO THE BEST INTEREST OF THE CHILD” and substitute “(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION”; in line 27, strike “AN EVIDENTIARY HEARING AND ISSUE A DECISION” and substitute “A TRIAL”; strike beginning with “SERVICE” in line 28 down through “COMPLAINT” in line 29 and substitute “AN ANSWER TO THE COMPLAINT IS FILED”; and after line 29, insert:

“(2) UNLESS BOTH PARTIES AGREE OTHERWISE, 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 SHALL STAY ALL FURTHER PROCEEDINGS IN THE ACTION TO TERMINATE PARENTAL RIGHTS UNTIL THE CRIMINAL PROCEEDING IS RESOLVED.

(F) 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."

On page 5, strike beginning with "EXCEPT" in line 1 down through "THAT" in line 2 and substitute "IF"; in line 3, strike "THAT"; and strike in their entirety lines 8 through 11, inclusive, and substitute:

"(B) A PARTY'S TESTIMONY AND ANY OTHER INFORMATION OBTAINED 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

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