

# HOUSE BILL 646

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CF SB 593

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By: Delegates Dumais, Anderson, Angel, Arentz, Atterbearly, Barkley, B. Barnes, Barve, Beidle, Carozza, Carr, Chang, Clippinger, Cluster, Conaway, Cullison, Davis, Folden, Fraser-Hidalgo, Frick, Frush, Gaines, Gilchrist, Glass, Glenn, Gutierrez, Healey, Hettleman, Hill, Hixson, Holmes, C. Howard, Jackson, Jameson, Jones, Kaiser, Kelly, Kittleman, Korman, Krebs, Lafferty, Lierman, Lisanti, Luedtke, Malone, McComas, McIntosh, A. Miller, Moon, Morales, Oaks, Parrott, Pena-Melnyk, Pendergrass, Platt, Proctor, Rey, Reznik, B. Robinson, S. Robinson, Rosenberg, Sample-Hughes, Sanchez, Smith, Stein, Sydnor, Szeliga, Tarlau, Valderrama, Valentino-Smith, Vogt, Waldstreicher, A. Washington, M. Washington, West, B. Wilson, C. Wilson, and P. Young

Introduced and read first time: February 4, 2016

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 18, 2016

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## CHAPTER \_\_\_\_\_

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 requiring 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 of a parent; ~~authorizing the court to approve~~  
11 ~~a certain supervised visitation arrangement under certain circumstances;~~ specifying  
12 certain procedures for an action for termination of parental rights under this Act;  
13 authorizing the court to order certain means of service under certain circumstances;  
14 prohibiting the court from requiring publication of the name or personally  
15 identifying information of a party or the child; specifying that a party's testimony in

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### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 a certain termination of parental rights proceeding is inadmissible as evidence in a  
 2 criminal proceeding against that party under certain circumstances; requiring the  
 3 Office of the Public Defender to represent certain respondents in a proceeding under  
 4 this Act; defining certain terms; and generally relating to children conceived without  
 5 consent and termination of parental rights.

6 BY repealing and reenacting, with amendments,  
 7 Article – Criminal Procedure  
 8 Section 16–204(b)(1)  
 9 Annotated Code of Maryland  
 10 (2008 Replacement Volume and 2015 Supplement)

11 BY adding to  
 12 Article – Family Law  
 13 Section 5–1401 through 5–1404 to be under the new subtitle “Subtitle 14. Child  
 14 Conceived Without Consent”  
 15 Annotated Code of Maryland  
 16 (2012 Replacement Volume and 2015 Supplement)

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

19 **Article – Criminal Procedure**

20 16–204.

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

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

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

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

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

32 (v) a proceeding involving children in need of assistance under §  
 33 3–813 of the Courts Article; [or]

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

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

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

5                   3.     an appeal; OR

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

9                   Article – Family Law

10                  SUBTITLE 14. CHILD CONCEIVED WITHOUT CONSENT.

11                  5-1401.

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

14                  ~~(B) “MENTALLY INCAPACITATED INDIVIDUAL” MEANS AN INDIVIDUAL WHO,~~  
15 ~~BECAUSE OF THE INFLUENCE OF A DRUG, A NARCOTIC, OR AN INTOXICATING~~  
16 ~~SUBSTANCE, OR BECAUSE OF AN ACT COMMITTED AGAINST THE INDIVIDUAL~~  
17 ~~WITHOUT THE INDIVIDUAL'S CONSENT OR AWARENESS, IS RENDERED~~  
18 ~~SUBSTANTIALLY INCAPABLE OF:~~

19                   ~~(1) APPRAISING THE NATURE OF THE INDIVIDUAL'S CONDUCT; OR~~

20                   ~~(2) RESISTING VAGINAL INTERCOURSE OR ANY OTHER ACT THAT~~  
21 ~~RESULTS IN CONCEPTION OF A CHILD.~~

22                  ~~(C) (B) “NONCONSENSUAL SEXUAL CONDUCT” MEANS VAGINAL~~  
23 ~~INTERCOURSE OR ANY OTHER ACT THAT RESULTS IN CONCEPTION OF A CHILD AND~~  
24 ~~THAT WAS COMMITTED BY AN INDIVIDUAL:~~

25                   ~~(1) WITH FORCE OR THREAT OF FORCE AND WITHOUT CONSENT OF~~  
26 ~~THE OTHER INDIVIDUAL; OR~~

27                   ~~(2) AGAINST ANOTHER INDIVIDUAL WHO IS A SUBSTANTIALLY~~  
28 ~~COGNITIVELY IMPAIRED INDIVIDUAL, A MENTALLY INCAPACITATED INDIVIDUAL, OR~~  
29 ~~A PHYSICALLY HELPLESS INDIVIDUAL AN ACT THAT IS PROHIBITED UNDER § 3-303,~~  
30 ~~§ 3-304(A)(1) OR (2), OR § 3-323 OF THE CRIMINAL LAW ARTICLE.~~

~~(D) "PHYSICALLY HELPLESS INDIVIDUAL" MEANS AN INDIVIDUAL WHO:~~

~~(1) IS UNCONSCIOUS; OR~~

~~(2) (I) DOES NOT CONSENT TO VAGINAL INTERCOURSE OR ANY OTHER ACT RESULTING IN CONCEPTION OF A CHILD; AND~~

~~(II) IS PHYSICALLY UNABLE TO RESIST OR COMMUNICATE UNWILLINGNESS TO SUBMIT TO VAGINAL INTERCOURSE OR ANY OTHER ACT THAT RESULTS IN CONCEPTION OF A CHILD.~~

~~(E) (C) "RESPONDENT" MEANS THE PERSON ALLEGED TO HAVE COMMITTED AN ACT OF NONCONSENSUAL SEXUAL CONDUCT THAT RESULTS IN CONCEPTION OF THE CHILD AT ISSUE IN AN ACTION AGAINST WHOM AN ACTION FOR TERMINATION OF PARENTAL RIGHTS IS FILED UNDER THIS SUBTITLE.~~

~~(F) "SUBSTANTIALLY COGNITIVELY IMPAIRED INDIVIDUAL" MEANS AN INDIVIDUAL WHO SUFFERS FROM COGNITIVE IMPAIRMENT OR A MENTAL DISORDER, EITHER OF WHICH TEMPORARILY OR PERMANENTLY RENDERS THE INDIVIDUAL SUBSTANTIALLY INCAPABLE OF:~~

~~(1) APPRAISING THE NATURE OF THE INDIVIDUAL'S CONDUCT;~~

~~(2) RESISTING VAGINAL INTERCOURSE OR ANY OTHER ACT THAT RESULTS IN CONCEPTION OF A CHILD; OR~~

~~(3) COMMUNICATING UNWILLINGNESS TO SUBMIT TO VAGINAL INTERCOURSE OR ANY OTHER ACT THAT RESULTS IN CONCEPTION OF A CHILD.~~

5-1402.

(A) ~~AFTER~~ EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AFTER AN EVIDENTIARY HEARING, A COURT SHALL TERMINATE THE PARENTAL RIGHTS OF A RESPONDENT UNDER THIS SUBTITLE IF THE COURT:

(1) DETERMINES THAT THE RESPONDENT HAS BEEN SERVED:

(I) IN ACCORDANCE WITH THE MARYLAND RULES; AND

(II) BY A METHOD REASONABLY CALCULATED TO GIVE ACTUAL NOTICE;

(2) (I) FINDS THAT THE RESPONDENT HAS BEEN CONVICTED OF AN ACT OF NONCONSENSUAL SEXUAL CONDUCT AGAINST THE OTHER PARENT THAT

1 RESULTED IN THE CONCEPTION OF THE CHILD AT ISSUE IN AN ACTION UNDER THIS  
2 SUBTITLE; OR

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

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

10 (B) THE COURT MAY NOT TERMINATE PARENTAL RIGHTS UNDER  
11 SUBSECTION (A) OF THIS SECTION IF THE PARENTS WERE MARRIED AT THE TIME OF  
12 THE CONCEPTION OF THE CHILD AT ISSUE, UNLESS THE RESPONDENT HAS BEEN  
13 CONVICTED OF AN ACT OF NONCONSENSUAL SEXUAL CONDUCT AGAINST THE OTHER  
14 PARENT THAT RESULTED IN THE CONCEPTION OF THE CHILD.

15 (C) A TERMINATION OF PARENTAL RIGHTS UNDER THIS SECTION  
16 TERMINATES COMPLETELY A PARENT'S RIGHT TO CUSTODY OF, GUARDIANSHIP OF,  
17 AND INHERITANCE FROM, THE CHILD.

18 ~~(C) AFTER A TERMINATION OF PARENTAL RIGHTS UNDER THIS SUBTITLE,~~  
19 ~~IF THE COURT FINDS THAT IT IS IN THE BEST INTEREST OF THE CHILD, THE COURT~~  
20 ~~MAY APPROVE A SUPERVISED VISITATION ARRANGEMENT WITH THE RESPONDENT~~  
21 ~~THAT ASSURES THE SAFETY AND THE PHYSIOLOGICAL, PSYCHOLOGICAL, AND~~  
22 ~~EMOTIONAL WELL-BEING OF THE CHILD AND OF THE CHILD'S OTHER PARENT OR~~  
23 ~~GUARDIAN.~~

24 5-1403.

25 (A) AN ACTION FOR TERMINATION OF PARENTAL RIGHTS UNDER THIS  
26 SUBTITLE:

27 (1) MAY BE FILED BY EITHER PARENT OF THE CHILD, THE CHILD, OR  
28 THE CHILD'S GUARDIAN; AND

29 (2) SHALL BE INITIATED BY THE FILING OF A COMPLAINT.

30 (B) A RESPONDENT SHALL FILE AN ANSWER TO A COMPLAINT FILED UNDER  
31 THIS SUBTITLE NOT LATER THAN 30 DAYS AFTER SERVICE OF THE COMPLAINT.

32 (C) (1) A SCHEDULING CONFERENCE SHALL BE HELD WITHIN ~~15~~ 60 DAYS  
33 AFTER SERVICE OF THE COMPLAINT.

1           **(2) AT THE SCHEDULING CONFERENCE, THE COURT:**

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

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

7           **(3) A COMPLAINT FILED UNDER THIS SUBTITLE SHALL INCLUDE A**  
8 **NOTICE TO THE RESPONDENT THAT A SCHEDULING CONFERENCE WILL BE HELD**  
9 **WITHIN ~~15~~ 60 DAYS AFTER SERVICE OF THE COMPLAINT.**

10           **(D) UNLESS IT IS CONTRARY TO THE BEST INTEREST OF THE CHILD, THE**  
11 **COURT SHALL HOLD AN EVIDENTIARY HEARING AND ISSUE A DECISION ON**  
12 **TERMINATION OF PARENTAL RIGHTS NOT LATER THAN 180 DAYS AFTER SERVICE OF**  
13 **THE COMPLAINT.**

14 **5-1404.**

15           **(A) (1) EXCEPT AS PROVIDED IN ~~SUBSECTION (B) OF THIS SECTION~~**  
16 **PARAGRAPH (3) OF THIS SUBSECTION, WHEN PROOF IS MADE BY AFFIDAVIT THAT**  
17 **GOOD-FAITH EFFORTS TO SERVE THE RESPONDENT HAVE NOT SUCCEEDED OR THAT**  
18 **THE RESPONDENT HAS ACTED TO EVADE SERVICE, THE COURT MAY ORDER ANY**  
19 **OTHER MEANS OF SERVICE THAT THE COURT CONSIDERS APPROPRIATE UNDER THE**  
20 **CIRCUMSTANCES AND THAT IS REASONABLY CALCULATED TO GIVE ACTUAL NOTICE**  
21 **OF THE PROCEEDING TO THE RESPONDENT.**

22           ~~**(B)**~~ **(2) THE COURT SHALL RULE ON ANY MOTION FOR ALTERNATIVE**  
23 **SERVICE UNDER THIS SECTION WITHIN 15 DAYS AFTER THE FILING OF THE MOTION.**

24           ~~**(C)**~~ **(3) THE COURT MAY NOT REQUIRE PUBLICATION OF THE NAME OR**  
25 **PERSONALLY IDENTIFYING INFORMATION OF ANY PARTY OR THE CHILD.**

26           **(B) A PARTY'S TESTIMONY IN A PROCEEDING UNDER THIS SUBTITLE IS**  
27 **INADMISSIBLE AS EVIDENCE IN A CRIMINAL PROCEEDING AGAINST THAT PARTY IF:**

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

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 October 1, 2016.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.