

# SENATE BILL 2

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(PRE-FILED)

8lr0500  
CF HB 1

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By: **Senators Feldman, Miller, and Lee**

Requested: August 15, 2017

Introduced and read first time: January 10, 2018

Assigned to: Judicial Proceedings

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## 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 by clear and convincing  
7 evidence to have committed an act of nonconsensual sexual conduct against the other  
8 parent that resulted in the conception of a child; prohibiting the court from  
9 terminating parental rights under certain circumstances; specifying that a  
10 termination of parental rights under this Act terminates completely certain rights  
11 and responsibilities of a parent; specifying certain procedures for an action for  
12 termination of parental rights under this Act; authorizing the court to order certain  
13 means of service under certain circumstances; requiring the court to rule on a certain  
14 motion within a certain period of time; prohibiting the court from requiring  
15 publication of the name or personally identifying information of certain individuals;  
16 specifying that the failure of the court to advise the respondent of certain matters at  
17 a certain scheduling conference is not grounds to overturn a finding under this Act;  
18 requiring the court to hold a trial on termination of parental rights within a certain  
19 period of time after an answer to the complaint is filed; authorizing the court to stay  
20 further proceedings in a termination of parental rights action until a certain criminal  
21 proceeding is resolved under certain circumstances; authorizing a respondent in a  
22 termination of parental rights action to refuse to testify or to offer evidence that may  
23 incriminate the respondent; specifying that no adverse inference may be drawn from  
24 the respondent's refusal to testify or to offer evidence; specifying that a parent's  
25 testimony and certain other information in a termination of parental rights  
26 proceeding are inadmissible as evidence in a criminal proceeding against that parent  
27 under certain circumstances; authorizing the court, under certain circumstances, to  
28 order that court records of a proceeding under this Act be sealed or to require that  
29 filings be submitted and maintained in a form that protects the privacy of the parents  
30 and the child; establishing that a parent in a termination of parental rights

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 proceeding is entitled to the assistance of counsel; requiring the court to refer certain  
2 unrepresented parents to certain legal services organizations for assignment of  
3 counsel; requiring the court to appoint counsel for a parent under certain  
4 circumstances; establishing that a parent is not entitled to the assistance of counsel  
5 at the expense of the Maryland Legal Services Corporation or to appointed counsel  
6 unless the parent is indigent; defining certain terms; and generally relating to  
7 children conceived without consent and termination of parental rights.

8 BY adding to

9 Article – Family Law

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

12 Annotated Code of Maryland

13 (2012 Replacement Volume and 2017 Supplement)

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

16 **Article – Family Law**

17 **SUBTITLE 14. CHILD CONCEIVED WITHOUT CONSENT.**

18 **5–1401.**

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

21 (B) “NONCONSENSUAL SEXUAL CONDUCT” MEANS AN ACT COMMITTED BY A  
22 RESPONDENT AGAINST THE OTHER PARENT THAT IS PROHIBITED UNDER:

23 (1) § 3–303 OR § 3–304(A)(1) OR (2) OF THE CRIMINAL LAW ARTICLE;  
24 OR

25 (2) § 3–323 OF THE CRIMINAL LAW ARTICLE, IF THE OTHER PARENT  
26 IS A MINOR AND THE RESPONDENT WAS AT LEAST 4 YEARS OLDER THAN THE OTHER  
27 PARENT AT THE TIME OF THE ACT.

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

30 **5–1402.**

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

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

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

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

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

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

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

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

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

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

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

29 **5-1403.**

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

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

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

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

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

11           **(C) IN AN ACTION FOR TERMINATION OF PARENTAL RIGHTS FILED AGAINST**  
12 **A RESPONDENT BY A CHILD'S COURT-APPOINTED GUARDIAN OR ATTORNEY UNDER**  
13 **THIS SUBTITLE:**

14                   **(1) THE OTHER PARENT SHALL BE JOINED AS A PARTY TO THE**  
15 **ACTION; AND**

16                   **(2) THE ACTION MAY NOT PROCEED IF THE OTHER PARENT OBJECTS**  
17 **BEFORE THE COMMENCEMENT OF A TRIAL UNDER THIS SUBTITLE.**

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

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

28                   **(3) THE COURT MAY NOT REQUIRE PUBLICATION OF THE NAME OR**  
29 **PERSONALLY IDENTIFYING INFORMATION OF THE OTHER PARENT OR THE CHILD.**

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

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

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

4 (II) AFTER PROVIDING THE PARENTS WITH AN OPPORTUNITY TO  
5 BE HEARD, MAY DETERMINE TEMPORARY CUSTODY OF THE MINOR CHILD; AND

6 (III) SHALL ADVISE THE RESPONDENT THAT:

7 1. THE RESPONDENT MAY REFUSE TO TESTIFY OR TO  
8 OFFER EVIDENCE; AND

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

11 (3) FAILURE OF THE COURT TO ADVISE A RESPONDENT UNDER  
12 PARAGRAPH (2)(III) OF THIS SUBSECTION IS NOT GROUNDS TO OVERTURN A  
13 FINDING UNDER THIS SUBTITLE.

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

17 5-1404.

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

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

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

32 (1) THE RESPONDENT MAY REFUSE TO TESTIFY OR TO OFFER

1 EVIDENCE; AND

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

4 (C) A PARENT'S TESTIMONY AND ANY OTHER INFORMATION OBTAINED  
5 FROM THE PARENT IN A PROCEEDING UNDER THIS SUBTITLE AND ANY  
6 INFORMATION DIRECTLY OR INDIRECTLY DERIVED FROM THE PARENT'S TESTIMONY  
7 OR THE OTHER INFORMATION ARE INADMISSIBLE AS EVIDENCE IN A CRIMINAL  
8 PROCEEDING AGAINST THAT PARENT IF:

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

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

13 (D) THE COURT, ON ITS OWN MOTION OR ON PETITION, AND FOR GOOD  
14 CAUSE SHOWN, MAY ORDER THAT COURT RECORDS OF A PROCEEDING UNDER THIS  
15 SUBTITLE BE SEALED OR MAY REQUIRE THAT FILINGS BE SUBMITTED AND  
16 MAINTAINED IN A FORM THAT PROTECTS THE PRIVACY OF THE PARENTS AND THE  
17 CHILD.

18 5-1405.

19 (A) A PARENT IN A PROCEEDING UNDER THIS SUBTITLE IS ENTITLED TO  
20 THE ASSISTANCE OF COUNSEL.

21 (B) (1) (I) THE COURT SHALL REFER AN UNREPRESENTED  
22 PETITIONER-PARENT TO THE SEXUAL ASSAULT LEGAL INSTITUTE FOR  
23 ASSIGNMENT OF COUNSEL.

24 (II) THE COURT SHALL REFER AN UNREPRESENTED  
25 RESPONDENT TO ANOTHER QUALIFIED GRANTEE OF THE MARYLAND LEGAL  
26 SERVICES CORPORATION FOR ASSIGNMENT OF COUNSEL.

27 (III) IF COUNSEL FROM A DESIGNATED LEGAL SERVICES  
28 ORGANIZATION IS NOT AVAILABLE, THE COURT SHALL APPOINT COUNSEL FOR THE  
29 PARENT.

30 (2) A PARENT IS NOT ENTITLED TO THE ASSISTANCE OF COUNSEL AT  
31 THE EXPENSE OF THE MARYLAND LEGAL SERVICES CORPORATION OR TO  
32 APPOINTED COUNSEL UNLESS THE PARENT IS INDIGENT.

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2018.