
By: **Senators Greenip, Colburn, Hafer, Haines, Harris, Hooper, Mooney, and Stone**

Introduced and read first time: January 24, 2006

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Termination of Parental Rights - Child Conceived as the**
3 **Result of Rape**

4 FOR the purpose of requiring that a court consider whether a parent has been
5 convicted of rape that resulted in the conception of a child, under certain
6 circumstances, in determining whether to terminate parental rights and grant
7 guardianship or adoption of a child without consent; and generally relating to
8 the termination of parental rights for a child conceived as the result of rape.

9 BY repealing and reenacting, with amendments,
10 Article - Family Law
11 Section 5-323 and 5-3B-21
12 Annotated Code of Maryland
13 (2004 Replacement Volume and 2005 Supplement)

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

16 **Article - Family Law**

17 5-323.

18 (a) In this section, "drug" means cocaine, heroin, or a derivative of cocaine or
19 heroin.

20 (b) If, after consideration of factors as required in this section, a juvenile court
21 finds by clear and convincing evidence that terminating the rights of a parent is in a
22 child's best interests, the juvenile court may grant guardianship of the child without
23 consent otherwise required under this subtitle and over the child's objection.

24 (c) A juvenile court need not consider any factor listed in subsection (d) of this
25 section in determining a child's best interests if, after a thorough investigation by a
26 local department, the juvenile court finds that:

27 (1) the identities of the child's parents are unknown; and

1 (2) during the 60 days immediately after the child's adjudication as a
2 child in need of assistance, no one has claimed to be the child's parent.

3 (d) Except as provided in subsection (c) of this section, in ruling on a petition
4 for guardianship of a child, a juvenile court shall give primary consideration to the
5 health and safety of the child and consideration to all other factors needed to
6 determine whether terminating a parent's rights is in the child's best interests,
7 including:

8 (1) (i) all services offered to the parent before the child's placement,
9 whether offered by a local department, another agency, or a professional;

10 (ii) the extent, nature, and timeliness of services offered by a local
11 department to facilitate reunion of the child and parent; and

12 (iii) the extent to which a local department and parent have fulfilled
13 their obligations under a social services agreement, if any;

14 (2) the results of the parent's effort to adjust the parent's circumstances,
15 condition, or conduct to make it in the child's best interests for the child to be
16 returned to the parent's home, including:

17 (i) the extent to which the parent has maintained regular contact
18 with:

19 1. the child;

20 2. the local department to which the child is committed; and

21 3. if feasible, the child's caregiver;

22 (ii) the parent's contribution to a reasonable part of the child's care
23 and support, if the parent is financially able to do so;

24 (iii) the existence of a parental disability that makes the parent
25 consistently unable to care for the child's immediate and ongoing physical or
26 psychological needs for long periods of time; and

27 (iv) whether additional services would be likely to bring about a
28 lasting parental adjustment so that the child could be returned to the parent within
29 an ascertainable time not to exceed 18 months from the date of placement unless the
30 juvenile court makes a specific finding that it is in the child's best interests to extend
31 the time for a specified period;

32 (3) whether:

33 (i) the parent has abused or neglected the child or a minor and the
34 seriousness of the abuse or neglect;

35 (ii) 1. A. on admission to a hospital for the child's delivery, the
36 mother tested positive for a drug as evidenced by a positive toxicology test; or

1 B. upon the birth of the child, the child tested positive for a
2 drug as evidenced by a positive toxicology test; and

3 2. the mother refused the level of drug treatment
4 recommended by a qualified addictions specialist, as defined in § 5-1201 of this title,
5 or by a physician or psychologist, as defined in the Health Occupations Article;

6 (iii) the parent subjected the child to:

7 1. chronic abuse;

8 2. chronic and life-threatening neglect;

9 3. sexual abuse; or

10 4. torture;

11 (iv) the parent has been convicted, in any state or any court of the
12 United States, of:

13 1. a crime of violence against:

14 A. a minor offspring of the parent;

15 B. the child; or

16 C. another parent of the child; [or]

17 2. aiding or abetting, conspiring, or soliciting to commit a
18 crime described in subitem 1 of this item; [and] OR

19 3. RAPE THAT RESULTED IN THE CONCEPTION OF THE
20 CHILD; AND

21 (v) the parent has involuntarily lost parental rights to a sibling of
22 the child; and

23 (4) (i) the child's emotional ties with and feelings toward the child's
24 parents, the child's siblings, and others who may affect the child's best interests
25 significantly;

26 (ii) the child's adjustment to:

27 1. community;

28 2. home;

29 3. placement; and

30 4. school;

1 (iii) the child's feelings about severance of the parent-child
2 relationship; and

3 (iv) the likely impact of terminating parental rights on the child's
4 well-being.

5 (e) (1) A juvenile court shall consider the evidence under subsection (d)(3)(i)
6 and (ii) of this section as to a continuing or serious act or condition and may waive a
7 local department's obligations for services described in subsection (d)(1) of this section
8 if, after appropriate evaluation of efforts made and services offered, the juvenile court
9 finds by clear and convincing evidence that a waiver is in the child's best interests.

10 (2) A juvenile court may waive a local department's obligations for
11 services described in subsection (d)(1) of this section if the juvenile court finds by
12 clear and convincing evidence that one or more of the acts or circumstances listed in
13 subsection (d)(3)(iii), (iv), or (v) of this section exists.

14 (3) If a juvenile court waives reunification efforts under § 3-812(d) of the
15 Courts Article, the juvenile court may not consider any factor under subsection (d)(1)
16 of this section.

17 (f) If a juvenile court finds that an act or circumstance listed in subsection
18 (d)(3)(iii), (iv), or (v) of this section exists, the juvenile court shall make a specific
19 finding, based on facts in the record, whether return of the child to a parent's custody
20 poses an unacceptable risk to the child's future safety.

21 (g) If a parent has consented to guardianship in accordance with §
22 5-320(a)(1)(iii) of this subtitle, the loss of parental rights shall be considered
23 voluntary.

24 5-3B-21.

25 (a) This section applies only if a parent affirmatively withholds consent by
26 filing a notice of objection.

27 (b) (1) A court may allow adoption, without parental consent otherwise
28 required under this subtitle, by a petitioner who has exercised physical care, control,
29 or custody over the prospective adoptee for at least 180 days, if the court finds by
30 clear and convincing evidence that:

31 (i) the parent has not had custody of the prospective adoptee for at
32 least 1 year;

33 (ii) the prospective adoptee has significant emotional ties to and
34 feelings for the petitioner; and

35 (iii) the parent:

- 1 1. has not maintained meaningful contact with the
2 prospective adoptee while the petitioner had custody, notwithstanding an opportunity
3 to do so;
- 4 2. has failed to contribute to the prospective adoptee's
5 physical care and support, notwithstanding the ability to do so;
- 6 3. has subjected the prospective adoptee to:
- 7 A. chronic abuse;
- 8 B. chronic and life-threatening neglect;
- 9 C. sexual abuse; or
- 10 D. torture;
- 11 4. has been convicted of abuse of any offspring;
- 12 5. has been convicted, in any state or any court of the United
13 States, of:
- 14 A. a crime of violence against:
- 15 I. a minor offspring of the parent;
- 16 II. the child; or
- 17 III. another parent of the child; [or]
- 18 B. aiding or abetting, conspiring, or soliciting to commit a
19 crime described in subitem A of this item; or
- 20 C. RAPE THAT RESULTED IN THE CONCEPTION OF THE
21 CHILD; OR
- 22 6. has, other than by consent, lost parental rights to a sibling
23 of the prospective adoptee.

24 (2) If a court finds that an act or circumstance listed in paragraph
25 (1)(iii)3 or 5 of this subsection exists, the court shall make a specific finding, based on
26 facts in the record, whether return of the prospective adoptee to the custody of the
27 parent poses an unacceptable risk to the prospective adoptee's safety.

28 (3) In ruling under this subsection, a court shall give primary
29 consideration to the health and safety of the prospective adoptee in determining the
30 prospective adoptee's best interests.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2006.