

SENATE BILL 385

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SB 239/06 – JPR

8lr2076

By: **Senators Greenip, Brinkley, Colburn, DeGrange, Forehand, Harris, Jacobs, Kittleman, Lenett, Stoltzfus, and Stone**
Introduced and read first time: January 30, 2008
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–22
12 Annotated Code of Maryland
13 (2006 Replacement Volume and 2007 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, methamphetamine, or a
19 derivative of cocaine, heroin, or methamphetamine.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

21 (i) the extent to which the parent has maintained regular
22 contact with:

23 1. the child;

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

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

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

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

32 (iv) whether additional services would be likely to bring about a
33 lasting parental adjustment so that the child could be returned to the parent within an
34 ascertainable time not to exceed 18 months from the date of placement unless the

1 juvenile court makes a specific finding that it is in the child's best interests to extend
2 the time for a specified period;

3 (3) whether:

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

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

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

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

14 (iii) the parent subjected the child to:

15 1. chronic abuse;

16 2. chronic and life-threatening neglect;

17 3. sexual abuse; or

18 4. torture;

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

21 1. a crime of violence against:

22 A. a minor offspring of the parent;

23 B. the child; or

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

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

27 **3. RAPE THAT RESULTED IN THE CONCEPTION OF**
28 **THE CHILD; AND**

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

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

6 (ii) the child's adjustment to:

7 1. community;

8 2. home;

9 3. placement; and

10 4. school;

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

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

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

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

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

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

32 (g) If a parent has consented to guardianship in accordance with §
33 5-320(a)(1)(iii)1 of this subtitle, the loss of parental rights shall be considered
34 voluntary.

1 5-3B-22.

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

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

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

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

12 (iii) the parent:

13 1. has not maintained meaningful contact with the
14 prospective adoptee while the petitioner had custody, notwithstanding an opportunity
15 to do so;

16 2. has failed to contribute to the prospective adoptee's
17 physical care and support, notwithstanding the ability to do so;

18 3. has subjected the prospective adoptee to:

19 A. chronic abuse;

20 B. chronic and life-threatening neglect;

21 C. sexual abuse; or

22 D. torture;

23 4. has been convicted of abuse of any offspring;

24 5. has been convicted, in any state or any court of the
25 United States, of:

26 A. a crime of violence against:

27 I. a minor offspring of the parent;

28 II. the child; or

29 III. another parent of the child; [or]

1 B. aiding or abetting, conspiring, or soliciting to commit
2 a crime described in subitem A of this item; or

3 **C. RAPE THAT RESULTED IN THE CONCEPTION OF**
4 **THE CHILD; OR**

5 6. has, other than by consent, lost parental rights to a
6 sibling of the prospective adoptee.

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

11 (3) In determining whether it is in the best interests of a prospective
12 adoptee to terminate a parent's rights under this subsection, a court shall:

13 (i) give primary consideration to the health and safety of the
14 prospective adoptee; and

15 (ii) consider the report required under § 5-3B-16 of this
16 subtitle.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2008.