

SENATE BILL 516

D4

8lr2550
CF HB 500

By: **Senators Raskin, Astle, Brochin, Colburn, Conway, Currie, Forehand, Garagiola, Jacobs, Jones, Kelley, King, Klausmeier, Kramer, Lenett, Madaleno, McFadden, Middleton, Mooney, Muse, Peters, Pinsky, Pugh, Robey, Rosapepe, Stoltzfus, and Stone**

Introduced and read first time: February 1, 2008

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law – Denial of Paternity, Custody, and Visitation**

3 FOR the purpose of excluding as a father of a child a man who has committed a
4 certain sexual crime against the child’s mother for purposes of certain
5 provisions relating to the paternity of a child in a guardianship or adoption
6 proceeding under certain circumstances; requiring a court to consider a certain
7 statement when making a certain finding; prohibiting a court from requiring
8 publication of certain information under certain circumstances; requiring that a
9 certain hearing be held within a certain period of time; authorizing a court to
10 order a man to provide financial support to a child under certain circumstances;
11 prohibiting a court from awarding custody of or visitation with a child to a
12 parent who has committed a certain sexual crime against the other parent
13 under certain circumstances; requiring a court to consider the safety and
14 well-being of the child’s other parent or guardian in approving supervised
15 visitation; and generally relating to adoption, guardianship, custody, and
16 visitation.

17 BY repealing and reenacting, with amendments,
18 Article – Family Law
19 Section 5–306, 5–3A–06, 5–3B–05, and 9–101.2
20 Annotated Code of Maryland
21 (2006 Replacement Volume and 2007 Supplement)

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

24 **Article – Family Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 5-306.

2 (a) Unless a court excludes a man as the father of a child, a man is the father
3 if:

4 (1) the man was married to the child's mother at the time of the child's
5 conception;

6 (2) the man was married to the child's mother at the time of the child's
7 birth;

8 (3) the man is named as the father on the child's birth certificate and
9 has not signed a denial of paternity;

10 (4) the child's mother has named the man as the child's father and the
11 man has not signed a denial of paternity;

12 (5) the man has been adjudicated to be the child's father;

13 (6) the man has acknowledged himself, orally or in writing, to be the
14 child's father and the mother agrees; or

15 (7) on the basis of genetic testing, the man is indicated to be the child's
16 biological father.

17 (B) (1) **ON MOTION OF THE CHILD'S MOTHER AND AFTER SERVICE OF**
18 **THE MOTION IN ACCORDANCE WITH THE MARYLAND RULES AND REASONABLY**
19 **CALCULATED TO GIVE ACTUAL NOTICE AND A HEARING, A COURT SHALL**
20 **EXCLUDE A MAN AS THE FATHER OF A CHILD IF THE COURT:**

21 (I) **FINDS BY CLEAR AND CONVINCING EVIDENCE THAT:**

22 **1. THE MAN HAS COMMITTED AN ACT AGAINST THE**
23 **CHILD'S MOTHER THAT IS PROHIBITED BY § 3-303, § 3-304(A)(1) OR (2), OR §**
24 **3-323 OF THE CRIMINAL LAW ARTICLE OR, IF THE MOTHER IS UNDER THE AGE**
25 **OF 16 YEARS AT THE TIME OF THE ACT, § 3-602 OF THE CRIMINAL LAW**
26 **ARTICLE OR HAS COMMITTED AN ACT IN ANOTHER JURISDICTION THAT, IF**
27 **COMMITTED IN THIS STATE, WOULD CONSTITUTE THAT ACT; AND**

28 **2. THE CHILD WAS CONCEIVED AS A RESULT OF THE**
29 **ACT; AND**

30 (II) **FINDS THAT IT IS IN THE BEST INTERESTS OF THE CHILD**
31 **FOR THE MAN TO BE EXCLUDED AS THE CHILD'S FATHER.**

1 **(2) IN MAKING A FINDING UNDER PARAGRAPH (1) OF THIS**
2 **SUBSECTION, IN ADDITION TO ANY OTHER RELEVANT EVIDENCE, THE COURT**
3 **SHALL CONSIDER A PRIOR STATEMENT REGARDING THE CIRCUMSTANCES OF**
4 **THE CHILD’S CONCEPTION MADE BY THE CHILD’S MOTHER TO LAW**
5 **ENFORCEMENT, CHILD PROTECTIVE SERVICES, OR ANY OTHER THIRD PARTY**
6 **DEEMED RELIABLE BY THE COURT.**

7 **(3) (I) FOR PURPOSES OF SERVICE OF THE MOTION**
8 **DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, THE COURT MAY NOT**
9 **REQUIRE PUBLICATION OF THE MOTHER’S NAME OR OTHER PERSONAL**
10 **IDENTIFYING INFORMATION.**

11 **(II) A HEARING UNDER PARAGRAPH (1) OF THIS**
12 **SUBSECTION SHALL BE HELD WITHIN 30 DAYS AFTER SERVICE OF THE MOTION.**

13 **(4) IF THE COURT EXCLUDES A MAN AS A FATHER OF A CHILD**
14 **UNDER THIS SUBSECTION, THE COURT MAY ORDER THE MAN TO PROVIDE**
15 **FINANCIAL SUPPORT TO THE CHILD IN ACCORDANCE WITH TITLE 10 OF THIS**
16 **ARTICLE OR OTHERWISE.**

17 **[(b)] (C) (1) A petitioner under Part II or Part III of this subtitle shall**
18 **give a juvenile court notice that a man who is not named in the petition and has not**
19 **been excluded as a father claims paternity.**

20 **(2) After a request of a party or claimant and before ruling on a**
21 **petition under Part II or Part III of this subtitle, a juvenile court shall hold a hearing**
22 **on the issue of paternity.**

23 5-3A-06.

24 **(a) Unless a court excludes a man as the father of a child, a man is the father**
25 **if:**

26 **(1) the man was married to the child’s mother at the time of the child’s**
27 **conception;**

28 **(2) the man was married to the child’s mother at the time of the child’s**
29 **birth;**

30 **(3) the man is named as the father on the child’s birth certificate and**
31 **has not signed a denial of paternity;**

32 **(4) the child’s mother has named the man as the child’s father and the**
33 **man has not signed a denial of paternity;**

34 **(5) the man has been adjudicated to be the child’s father;**

1 (6) the man has acknowledged himself, orally or in writing, to be the
2 child's father and the mother agrees; or

3 (7) on the basis of genetic testing, the man is indicated to be the child's
4 biological father.

5 (B) (1) **ON MOTION OF THE CHILD'S MOTHER AND AFTER SERVICE OF**
6 **THE MOTION IN ACCORDANCE WITH THE MARYLAND RULES AND REASONABLY**
7 **CALCULATED TO GIVE ACTUAL NOTICE AND A HEARING, A COURT SHALL**
8 **EXCLUDE A MAN AS THE FATHER OF A CHILD IF THE COURT:**

9 (I) **FINDS BY CLEAR AND CONVINCING EVIDENCE THAT:**

10 1. **THE MAN HAS COMMITTED AN ACT AGAINST THE**
11 **CHILD'S MOTHER THAT IS PROHIBITED BY § 3-303, § 3-304(A)(1) OR (2), OR §**
12 **3-323 OF THE CRIMINAL LAW ARTICLE OR, IF THE MOTHER IS UNDER THE AGE**
13 **OF 16 YEARS AT THE TIME OF THE ACT, § 3-602 OF THE CRIMINAL LAW**
14 **ARTICLE OR HAS COMMITTED AN ACT IN ANOTHER JURISDICTION THAT, IF**
15 **COMMITTED IN THIS STATE, WOULD CONSTITUTE THAT ACT; AND**

16 2. **THE CHILD WAS CONCEIVED AS A RESULT OF THE**
17 **ACT; AND**

18 (II) **FINDS THAT IT IS IN THE BEST INTERESTS OF THE CHILD**
19 **FOR THE MAN TO BE EXCLUDED AS THE CHILD'S FATHER.**

20 (2) **IN MAKING A FINDING UNDER PARAGRAPH (1) OF THIS**
21 **SUBSECTION, IN ADDITION TO ANY OTHER RELEVANT EVIDENCE, THE COURT**
22 **SHALL CONSIDER A PRIOR STATEMENT REGARDING THE CIRCUMSTANCES OF**
23 **THE CHILD'S CONCEPTION MADE BY THE CHILD'S MOTHER TO LAW**
24 **ENFORCEMENT, CHILD PROTECTIVE SERVICES, OR ANY OTHER THIRD PARTY**
25 **DEEMED RELIABLE BY THE COURT.**

26 (3) (I) **FOR PURPOSES OF SERVICE OF THE MOTION**
27 **DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, THE COURT MAY NOT**
28 **REQUIRE PUBLICATION OF THE MOTHER'S NAME OR OTHER PERSONAL**
29 **IDENTIFYING INFORMATION.**

30 (II) **A HEARING UNDER PARAGRAPH (1) OF THIS**
31 **SUBSECTION SHALL BE HELD WITHIN 30 DAYS AFTER SERVICE OF THE MOTION.**

32 (4) **IF THE COURT EXCLUDES A MAN AS A FATHER OF A CHILD**
33 **UNDER THIS SUBSECTION, THE COURT MAY ORDER THE MAN TO PROVIDE**

1 **FINANCIAL SUPPORT TO THE CHILD IN ACCORDANCE WITH TITLE 10 OF THIS**
2 **ARTICLE OR OTHERWISE.**

3 [(b)] (C) (1) A petitioner under this subtitle shall give a court notice that
4 a man who is not named in the petition and has not been excluded as a father claims
5 paternity.

6 (2) After a request of a party or claimant and before ruling on a
7 petition for guardianship or adoption under this subtitle, a court shall hold a hearing
8 on the issue of paternity.

9 5-3B-05.

10 (a) Unless a court excludes a man as the father of a child, a man is the father
11 if:

12 (1) the man was married to the child's mother at the time of the child's
13 conception;

14 (2) the man was married to the child's mother at the time of the child's
15 birth;

16 (3) the man is named as the father on the child's birth certificate and
17 has not signed a denial of paternity;

18 (4) the child's mother has named the man as the child's father and the
19 man has not signed a denial of paternity;

20 (5) the man has been adjudicated to be the child's father;

21 (6) the man has acknowledged himself, orally or in writing, to be the
22 child's father and the mother agrees; or

23 (7) on the basis of genetic testing, the man is indicated to be the child's
24 biological father.

25 (B) (1) **ON MOTION OF THE CHILD'S MOTHER AND AFTER SERVICE OF**
26 **THE MOTION IN ACCORDANCE WITH THE MARYLAND RULES AND REASONABLY**
27 **CALCULATED TO GIVE ACTUAL NOTICE AND A HEARING, A COURT SHALL**
28 **EXCLUDE A MAN AS THE FATHER OF A CHILD IF THE COURT:**

29 (I) **FINDS BY CLEAR AND CONVINCING EVIDENCE THAT:**

30 1. **THE MAN HAS COMMITTED AN ACT AGAINST THE**
31 **CHILD'S MOTHER THAT IS PROHIBITED BY § 3-303, § 3-304(A)(1) OR (2), OR §**
32 **3-323 OF THE CRIMINAL LAW ARTICLE OR, IF THE MOTHER IS UNDER THE AGE**

1 **OF 16 YEARS AT THE TIME OF THE ACT, § 3-602 OF THE CRIMINAL LAW**
2 **ARTICLE OR HAS COMMITTED AN ACT IN ANOTHER JURISDICTION THAT, IF**
3 **COMMITTED IN THIS STATE, WOULD CONSTITUTE THAT ACT; AND**

4 **2. THE CHILD WAS CONCEIVED AS A RESULT OF THE**
5 **ACT; AND**

6 **(II) FINDS THAT IT IS IN THE BEST INTERESTS OF THE CHILD**
7 **FOR THE MAN TO BE EXCLUDED AS THE CHILD'S FATHER.**

8 **(2) IN MAKING A FINDING UNDER PARAGRAPH (1) OF THIS**
9 **SUBSECTION, IN ADDITION TO ANY OTHER RELEVANT EVIDENCE, THE COURT**
10 **SHALL CONSIDER A PRIOR STATEMENT REGARDING THE CIRCUMSTANCES OF**
11 **THE CHILD'S CONCEPTION MADE BY THE CHILD'S MOTHER TO LAW**
12 **ENFORCEMENT, CHILD PROTECTIVE SERVICES, OR ANY OTHER THIRD PARTY**
13 **DEEMED RELIABLE BY THE COURT.**

14 **(3) (I) FOR PURPOSES OF SERVICE OF THE MOTION**
15 **DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, THE COURT MAY NOT**
16 **REQUIRE PUBLICATION OF THE MOTHER'S NAME OR OTHER PERSONAL**
17 **IDENTIFYING INFORMATION.**

18 **(II) A HEARING UNDER PARAGRAPH (1) OF THIS**
19 **SUBSECTION SHALL BE HELD WITHIN 30 DAYS AFTER SERVICE OF THE MOTION.**

20 **(4) IF THE COURT EXCLUDES A MAN AS A FATHER OF A CHILD**
21 **UNDER THIS SUBSECTION, THE COURT MAY ORDER THE MAN TO PROVIDE**
22 **FINANCIAL SUPPORT TO THE CHILD IN ACCORDANCE WITH TITLE 10 OF THIS**
23 **ARTICLE OR OTHERWISE.**

24 **[(b)] (C) (1) A petitioner under this subtitle shall give a court notice that**
25 **a man who is not named in the petition and has not been excluded as a father claims**
26 **paternity.**

27 **(2) After a request of a party or claimant and before ruling on a**
28 **petition for adoption under this subtitle, a court shall hold a hearing on the issue of**
29 **paternity.**

30 **9-101.2.**

31 **(a) Except as provided in subsection (b) of this section, unless good cause for**
32 **the award of custody or visitation is shown by clear and convincing evidence, a court**
33 **may not award custody of a child or visitation with a child:**

1 (1) to a parent who has been found by a court of this State to be guilty
2 of first degree or second degree murder of the other parent of the child, another child
3 of the parent, or any family member residing in the household of either parent of the
4 child; [or]

5 (2) to a parent who has been found by a court of any state or of the
6 United States to be guilty of a crime that, if committed in this State, would be first
7 degree murder or second degree murder of the other parent of the child, another child
8 of the parent, or any family member residing in the household of either parent of the
9 child; **OR**

10 (3) **TO A PARENT, IF THE COURT FINDS BY CLEAR AND**
11 **CONVINCING EVIDENCE THAT:**

12 (I) **THE PARENT HAS COMMITTED AN ACT AGAINST THE**
13 **OTHER PARENT THAT IS PROHIBITED BY § 3-303, § 3-304(A)(1) OR (2), OR §**
14 **3-323 OF THE CRIMINAL LAW ARTICLE OR, IF THE OTHER PARENT IS UNDER**
15 **THE AGE OF 16 YEARS AT THE TIME OF THE ACT, § 3-602 OF THE CRIMINAL LAW**
16 **ARTICLE OR HAS COMMITTED AN ACT IN ANOTHER JURISDICTION THAT, IF**
17 **COMMITTED IN THIS STATE, WOULD CONSTITUTE THAT ACT; AND**

18 (II) **THE CHILD WAS CONCEIVED AS A RESULT OF THE ACT.**

19 (b) If it is in the best interest of the child, the court may approve a
20 supervised visitation arrangement that assures the safety and the physiological,
21 psychological, and emotional well-being of the child **AND OF THE CHILD'S OTHER**
22 **PARENT OR GUARDIAN.**

23 (c) (1) **IN MAKING A FINDING UNDER SUBSECTION (A)(3) OF THIS**
24 **SECTION, IN ADDITION TO ANY OTHER RELEVANT EVIDENCE, THE COURT SHALL**
25 **CONSIDER A PRIOR STATEMENT REGARDING THE CIRCUMSTANCES OF THE**
26 **CHILD'S CONCEPTION MADE BY THE CHILD'S MOTHER TO LAW ENFORCEMENT,**
27 **CHILD PROTECTIVE SERVICES, OR ANY OTHER THIRD PARTY DEEMED RELIABLE**
28 **BY THE COURT.**

29 (2) **UNDER THE CIRCUMSTANCES DESCRIBED IN SUBSECTION**
30 **(A)(3) OF THIS SECTION:**

31 (I) **FOR PURPOSES OF SERVICE OF PROCESS, THE COURT**
32 **MAY NOT REQUIRE PUBLICATION OF THE OTHER PARENT'S NAME OR OTHER**
33 **PERSONAL IDENTIFYING INFORMATION; AND**

34 (II) **A HEARING SHALL BE HELD WITHIN 30 DAYS AFTER**
35 **SERVICE OF PROCESS.**

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