

HOUSE BILL 646

D4

6lr0454
CF 6lr0864

By: Delegates Dumais, Anderson, Angel, Arentz, Atterbeary, 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

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 requiring a court, under certain circumstances, to terminate the
6 parental rights of an individual found to have committed an act of nonconsensual
7 sexual conduct against the other parent that resulted in the conception of a child;
8 specifying that a termination of parental rights under this Act terminates completely
9 certain rights of a parent; authorizing the court to approve a certain supervised
10 visitation arrangement under certain circumstances; specifying certain procedures
11 for an action for termination of parental rights under this Act; authorizing the court
12 to order certain means of service under certain circumstances; prohibiting the court
13 from requiring publication of the name or personally identifying information of a
14 party or the child; defining certain terms; and generally relating to children
15 conceived without consent and termination of parental rights.

16 BY adding to
17 Article – Family Law
18 Section 5–1401 through 5–1404 to be under the new subtitle “Subtitle 14. Child
19 Conceived Without Consent”
20 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2012 Replacement Volume and 2015 Supplement)

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

Article – Family Law

SUBTITLE 14. CHILD CONCEIVED WITHOUT CONSENT.

5–1401.

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

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

(1) APPRAISING THE NATURE OF THE INDIVIDUAL’S CONDUCT; OR

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

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

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

(2) AGAINST ANOTHER INDIVIDUAL WHO IS A SUBSTANTIALLY COGNITIVELY IMPAIRED INDIVIDUAL, A MENTALLY INCAPACITATED INDIVIDUAL, OR A PHYSICALLY HELPLESS INDIVIDUAL.

(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

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

4 **(E) “RESPONDENT” MEANS THE PERSON ALLEGED TO HAVE COMMITTED AN**
5 **ACT OF NONCONSENSUAL SEXUAL CONDUCT THAT RESULTS IN CONCEPTION OF THE**
6 **CHILD AT ISSUE IN AN ACTION UNDER THIS SUBTITLE.**

7 **(F) “SUBSTANTIALLY COGNITIVELY IMPAIRED INDIVIDUAL” MEANS AN**
8 **INDIVIDUAL WHO SUFFERS FROM COGNITIVE IMPAIRMENT OR A MENTAL DISORDER,**
9 **EITHER OF WHICH TEMPORARILY OR PERMANENTLY RENDERS THE INDIVIDUAL**
10 **SUBSTANTIALLY INCAPABLE OF:**

11 **(1) APPRAISING THE NATURE OF THE INDIVIDUAL’S CONDUCT;**

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

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

16 **5-1402.**

17 **(A) AFTER AN EVIDENTIARY HEARING, A COURT SHALL TERMINATE THE**
18 **PARENTAL RIGHTS OF A RESPONDENT UNDER THIS SUBTITLE IF THE COURT:**

19 **(1) DETERMINES THAT THE RESPONDENT HAS BEEN SERVED:**

20 **(I) IN ACCORDANCE WITH THE MARYLAND RULES; AND**

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

23 **(2) FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE**
24 **RESPONDENT COMMITTED AN ACT OF NONCONSENSUAL SEXUAL CONDUCT AGAINST**
25 **THE OTHER PARENT THAT RESULTED IN THE CONCEPTION OF THE CHILD AT ISSUE**
26 **IN AN ACTION UNDER THIS SUBTITLE; AND**

27 **(3) FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT IT IS IN THE**
28 **BEST INTEREST OF THE CHILD TO TERMINATE THE PARENTAL RIGHTS OF THE**
29 **RESPONDENT.**

1 **(B) A TERMINATION OF PARENTAL RIGHTS UNDER THIS SECTION**
2 **TERMINATES COMPLETELY A PARENT'S RIGHT TO CUSTODY OF, GUARDIANSHIP OF,**
3 **AND INHERITANCE FROM, THE CHILD.**

4 **(C) AFTER A TERMINATION OF PARENTAL RIGHTS UNDER THIS SUBTITLE,**
5 **IF THE COURT FINDS THAT IT IS IN THE BEST INTEREST OF THE CHILD, THE COURT**
6 **MAY APPROVE A SUPERVISED VISITATION ARRANGEMENT WITH THE RESPONDENT**
7 **THAT ASSURES THE SAFETY AND THE PHYSIOLOGICAL, PSYCHOLOGICAL, AND**
8 **EMOTIONAL WELL-BEING OF THE CHILD AND OF THE CHILD'S OTHER PARENT OR**
9 **GUARDIAN.**

10 **5-1403.**

11 **(A) AN ACTION FOR TERMINATION OF PARENTAL RIGHTS UNDER THIS**
12 **SUBTITLE:**

13 **(1) MAY BE FILED BY EITHER PARENT OF THE CHILD, THE CHILD, OR**
14 **THE CHILD'S GUARDIAN; AND**

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

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

18 **(C) (1) A SCHEDULING CONFERENCE SHALL BE HELD WITHIN 15 DAYS**
19 **AFTER SERVICE OF THE COMPLAINT.**

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

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

24 **(II) MAY DETERMINE TEMPORARY CUSTODY OF THE MINOR**
25 **CHILD.**

26 **(3) A COMPLAINT FILED UNDER THIS SUBTITLE SHALL INCLUDE A**
27 **NOTICE TO THE RESPONDENT THAT A SCHEDULING CONFERENCE WILL BE HELD**
28 **WITHIN 15 DAYS AFTER SERVICE OF THE COMPLAINT.**

29 **(D) UNLESS IT IS CONTRARY TO THE BEST INTEREST OF THE CHILD, THE**
30 **COURT SHALL HOLD AN EVIDENTIARY HEARING AND ISSUE A DECISION ON**

1 TERMINATION OF PARENTAL RIGHTS NOT LATER THAN 180 DAYS AFTER SERVICE OF
2 THE COMPLAINT.

3 5-1404.

4 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, WHEN
5 PROOF IS MADE BY AFFIDAVIT THAT GOOD-FAITH EFFORTS TO SERVE THE
6 RESPONDENT HAVE NOT SUCCEEDED OR THAT THE RESPONDENT HAS ACTED TO
7 EVADE SERVICE, THE COURT MAY ORDER ANY OTHER MEANS OF SERVICE THAT THE
8 COURT CONSIDERS APPROPRIATE UNDER THE CIRCUMSTANCES AND THAT IS
9 REASONABLY CALCULATED TO GIVE ACTUAL NOTICE OF THE PROCEEDING TO THE
10 RESPONDENT.

11 (B) THE COURT SHALL RULE ON ANY MOTION FOR ALTERNATIVE SERVICE
12 UNDER THIS SECTION WITHIN 15 DAYS AFTER THE FILING OF THE MOTION.

13 (C) THE COURT MAY NOT REQUIRE PUBLICATION OF THE NAME OR
14 PERSONALLY IDENTIFYING INFORMATION OF ANY PARTY OR THE CHILD.

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