

BY: Judicial Proceedings Committee

AMENDMENTS TO HOUSE BILL 646
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike in their entirety lines 2 and 3 and substitute “Courts and Family Law – Evidence of Sexually Assaultive Behavior and Child Conceived Without Consent”; in line 5, after “of” insert “providing that, in a prosecution for certain sexual offenses, evidence that the defendant committed certain sexually assaultive behavior may be admissible for certain reasons; requiring that the State file a certain motion to introduce evidence of certain sexually assaultive behavior within a certain period of time; requiring a motion to include certain information; requiring a court to hold a hearing on a motion outside the presence of a jury; authorizing the court to admit certain evidence if the court makes certain findings; providing factors that a court shall consider; providing that certain provisions of this Act do not limit the admission or consideration of certain evidence;”; in line 10, after “rights” insert “and responsibilities”; in line 12, after “Act,” insert “requiring an action for termination of parental rights under this Act to be filed within a certain period of time; requiring the court to advise the respondent of certain rights at a certain scheduling conference; requiring an action for termination of parental rights under this Act to be stayed under certain circumstances; providing that in an action to terminate parental rights under this Act, a respondent may not be required to testify or to offer evidence that may incriminate the respondent and no adverse inference may be drawn from the respondent’s refusal to testify or to offer evidence;”; strike beginning with “prohibiting” in line 14 down through “child;” in line 15; and in line 15, after “testimony” insert “and any other information obtained”.

On page 2, in line 1, after “proceeding” insert “and any information derived from the testimony or other information”; in line 4, after “to” insert “the admissibility of evidence and”; and after line 5, insert:

“BY adding to

(Over)

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Article – Courts and Judicial Proceedings
Section 10–923
Annotated Code of Maryland
(2013 Replacement Volume and 2015 Supplement)”.

AMENDMENT NO. 2

On page 2, after line 18, insert:

“Article – Courts and Judicial Proceedings

10–923.

(A) IN THIS SECTION, “SEXUALLY ASSAULTIVE BEHAVIOR” MEANS AN ACT THAT WOULD CONSTITUTE:

(1) A SEXUAL CRIME UNDER TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE;

(2) SEXUAL ABUSE OF A MINOR UNDER § 3–602 OF THE CRIMINAL LAW ARTICLE;

(3) SEXUAL ABUSE OF A VULNERABLE ADULT UNDER § 3–604 OF THE CRIMINAL LAW ARTICLE;

(4) A VIOLATION OF 18 U.S.C. CHAPTER 109A; OR

(5) A VIOLATION OF A LAW OF ANOTHER STATE, THE UNITED STATES, OR A FOREIGN COUNTRY THAT IS EQUIVALENT TO AN OFFENSE UNDER ITEM (1), (2), (3), OR (4) OF THIS SUBSECTION.

(B) IN A CRIMINAL TRIAL FOR A SEXUAL OFFENSE LISTED IN SUBSECTION (A)(1), (2), OR (3) OF THIS SECTION, EVIDENCE OF OTHER SEXUALLY ASSAULTIVE BEHAVIOR BY THE DEFENDANT OCCURRING BEFORE OR AFTER THE OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL MAY BE ADMISSIBLE.

(C) (1) THE STATE SHALL FILE A MOTION OF INTENT TO INTRODUCE EVIDENCE OF SEXUALLY ASSAULTIVE BEHAVIOR AT LEAST 90 DAYS BEFORE TRIAL OR AT A LATER TIME IF AUTHORIZED BY THE COURT FOR GOOD CAUSE.

(2) A MOTION FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE A DESCRIPTION OF THE EVIDENCE.

(3) THE STATE SHALL PROVIDE A COPY OF A MOTION FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO THE DEFENDANT AND INCLUDE ANY OTHER INFORMATION REQUIRED TO BE DISCLOSED UNDER MARYLAND RULE 4-262 OR 4-263.

(D) THE COURT SHALL HOLD A HEARING OUTSIDE THE PRESENCE OF A JURY TO DETERMINE THE ADMISSIBILITY OF EVIDENCE OF SEXUALLY ASSAULTIVE BEHAVIOR.

(E) THE COURT MAY ADMIT EVIDENCE OF SEXUALLY ASSAULTIVE BEHAVIOR IF THE COURT FINDS AND STATES ON THE RECORD THAT:

(1) THE EVIDENCE IS BEING OFFERED TO:

(I) PROVE LACK OF CONSENT; OR

(II) REBUT AN EXPRESS OR IMPLIED ALLEGATION THAT A MINOR VICTIM FABRICATED THE SEXUAL OFFENSE;

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(2) THE SEXUALLY ASSAULTIVE BEHAVIOR WAS PROVEN BY CLEAR AND CONVINCING EVIDENCE; AND

(3) THE PROBATIVE VALUE OF THE EVIDENCE IS NOT SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE.

(F) BEFORE MAKING THE FINDINGS UNDER SUBSECTION (E) OF THIS SECTION, THE COURT SHALL CONSIDER:

(1) WHETHER THE ISSUE FOR WHICH THE EVIDENCE OF THE SEXUALLY ASSAULTIVE BEHAVIOR IS BEING OFFERED IS IN DISPUTE;

(2) THE SIMILARITY BETWEEN THE SEXUALLY ASSAULTIVE BEHAVIOR AND THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL;

(3) THE CLOSENESS IN TIME OF THE SEXUALLY ASSAULTIVE BEHAVIOR AND THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL; AND

(4) THE INDEPENDENCE OF THE SEXUALLY ASSAULTIVE BEHAVIOR FROM THE SEXUAL OFFENSE FOR WHICH THE DEFENDANT IS ON TRIAL.

(G) THIS SECTION DOES NOT LIMIT THE ADMISSION OR CONSIDERATION OF EVIDENCE UNDER ANY MARYLAND RULE OR OTHER PROVISION OF LAW.”.

AMENDMENT NO. 3

On page 4, in line 23, strike “AN EVIDENTIARY HEARING” and substitute “A TRIAL”; in the same line, strike “SHALL” and substitute “MAY”; strike beginning with

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the colon in line 25 down through “(I)” in line 26; in line 26, after “WITH” insert “RULE 2-121(A)(1) OF”; in the same line, strike “AND”; and strike in their entirety lines 27 and 28.

AMENDMENT NO. 4

On page 5, in line 16, after “COMPLETELY” insert “:

(1)”;

and in line 17, after “CHILD” insert “;AND

(2) A PARENT’S RESPONSIBILITY TO SUPPORT THE CHILD, INCLUDING THE RESPONSIBILITY TO PAY CHILD SUPPORT”.

AMENDMENT NO. 5

On page 5, strike beginning with the first comma in line 27 down through “GUARDIAN” in line 28; in line 29, after “COMPLAINT” insert “IN THE CIRCUIT COURT HAVING JURISDICTION OVER THE CHILD”; after line 29, insert:

“(B) AN ACTION FOR TERMINATION OF PARENTAL RIGHTS UNDER THIS SUBTITLE SHALL BE FILED WITHIN 5 YEARS AFTER THE DATE ON WHICH THE ALLEGED ACT OF NONCONSENSUAL SEXUAL CONDUCT THAT RESULTED IN CONCEPTION OF THE CHILD AT ISSUE OCCURRED.”;

and in lines 30 and 32, strike “(B)” and “(C)”, respectively, and substitute “(C)” and “(D)”, respectively.

On page 6, in line 10, strike “(D)” and substitute “(E)”; and strike beginning with “SERVICE” in line 12 down through “COMPLAINT” in line 13 and substitute “AN ANSWER TO THE COMPLAINT IS FILED”.

(Over)

AMENDMENT NO. 6

On pages 5 and 6, strike beginning with “WITHIN” in line 32 on page 5 down through the period in line 9 on page 6 and substitute “IN ACCORDANCE WITH THE MARYLAND RULES.”

(2) AT THE SCHEDULING CONFERENCE, THE COURT SHALL ADVISE THE RESPONDENT THAT:

(I) THE RESPONDENT MAY REFUSE TO TESTIFY OR TO OFFER EVIDENCE THAT MAY INCRIMINATE THE RESPONDENT; AND

(II) NO ADVERSE INFERENCE MAY BE DRAWN FROM THE RESPONDENT’S REFUSAL TO TESTIFY OR TO OFFER EVIDENCE.”.

AMENDMENT NO. 7

On page 6, in line 10, strike “UNLESS IT IS CONTRARY TO THE BEST INTEREST OF THE CHILD” and substitute “**(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION**”; in line 11, strike “AN EVIDENTIARY HEARING AND ISSUE A DECISION” and substitute “**A TRIAL**”; and after line 13, insert:

“(2) UNLESS BOTH PARTIES AGREE OTHERWISE, IF A CRIMINAL PROCEEDING INVOLVING THE SAME UNDERLYING FACTS IS PENDING AT THE TIME AN ACTION TO TERMINATE PARENTAL RIGHTS UNDER THIS SUBTITLE IS FILED, OR IF A CRIMINAL PROCEEDING INVOLVING THE SAME UNDERLYING FACTS IS COMMENCED AFTER AN ACTION TO TERMINATE PARENTAL RIGHTS UNDER THIS SUBTITLE IS FILED, THE COURT SHALL STAY ALL FURTHER PROCEEDINGS IN THE ACTION TO TERMINATE PARENTAL RIGHTS UNTIL THE CRIMINAL PROCEEDING IS RESOLVED.

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**(F) IN AN ACTION TO TERMINATE PARENTAL RIGHTS UNDER THIS
SUBTITLE:**

**(1) THE RESPONDENT MAY REFUSE TO TESTIFY OR TO OFFER
EVIDENCE THAT MAY INCRIMINATE THE RESPONDENT; AND**

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

AMENDMENT NO. 8

On page 6, strike beginning with "**(1)**" in line 15 down through "**THAT**" in line 16 and substitute "**IF**"; in line 17, strike "**THAT**"; and strike in their entirety lines 22 through 25, inclusive.

AMENDMENT NO. 9

On page 6, in line 26, after "**TESTIMONY**" insert "**AND ANY OTHER INFORMATION OBTAINED**"; and in the same line, after "**SUBTITLE**" insert "**AND ANY INFORMATION DIRECTLY OR INDIRECTLY DERIVED FROM THE PARTY'S TESTIMONY OR THE OTHER INFORMATION**".