

SENATE BILL 574

D4

7lr2223
CF HB 428

By: **Senators Feldman, Lee, Astle, Benson, Cassilly, Conway, Currie, DeGrange, Eckardt, Edwards, Ferguson, Guzzone, Jennings, Kagan, Kelley, King, Klausmeier, Madaleno, Manno, Mathias, McFadden, Middleton, Muse, Nathan-Pulliam, Norman, Peters, Pinsky, Ramirez, Ready, Robinson, Rosapepe, Salling, Serafini, Smith, Young, and Zucker**

Introduced and read first time: February 2, 2017

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 15, 2017

CHAPTER _____

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 authorizing a court, under certain circumstances, to terminate the
6 parental rights of an individual convicted of or found to have committed an act of
7 nonconsensual sexual conduct against the other parent that resulted in the
8 conception of a child; prohibiting the court from terminating parental rights under
9 certain circumstances; specifying that a termination of parental rights under this
10 Act terminates completely certain rights and responsibilities of a parent; specifying
11 certain procedures for an action for termination of parental rights under this Act;
12 authorizing the court to order certain means of service under certain circumstances;
13 requiring the court to rule on a certain motion within a certain period of time;
14 ~~prohibiting the court from requiring publication of the name or personally~~
15 ~~identifying information of the petitioner or the child;~~ requiring the court to hold a
16 trial on termination of parental rights within a certain period of time after an answer
17 to the complaint is filed; ~~authorizing~~ requiring the court to stay further proceedings
18 in a termination of parental rights action until a certain criminal proceeding is
19 resolved under certain circumstances; authorizing the court to stay or postpone a
20 trial on termination of parental rights for good cause; authorizing a respondent in a
21 termination of parental rights action to refuse to testify or to offer evidence ~~that may~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~incriminate the respondent~~; specifying that no adverse inference may be drawn from
 2 the respondent's refusal to testify or to offer evidence; specifying that a party's
 3 testimony and certain other information in a termination of parental rights
 4 proceeding is inadmissible as evidence in a criminal proceeding against that party
 5 under certain circumstances; establishing that a party to a termination of parental
 6 rights proceeding is entitled to the assistance of counsel; requiring the court to refer
 7 an unrepresented party to the Maryland Legal Services Corporation or its designee
 8 for assessment of counsel through a certain program; ~~establishing that a party is not~~
 9 ~~entitled to the assistance of counsel at the expense of the Maryland Legal Services~~
 10 ~~Corporation or its designee unless the party is indigent~~; defining certain terms; and
 11 generally relating to children conceived without consent and termination of parental
 12 rights.

13 BY adding to

14 Article – Family Law

15 Section 5–1401 through 5–1405 to be under the new subtitle “Subtitle 14. Child
 16 Conceived Without Consent”

17 Annotated Code of Maryland

18 (2012 Replacement Volume and 2016 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

20 That the Laws of Maryland read as follows:

21 **Article – Family Law**

22 **SUBTITLE 14. CHILD CONCEIVED WITHOUT CONSENT.**

23 **5–1401.**

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

26 (B) “NONCONSENSUAL SEXUAL CONDUCT” MEANS AN ACT THAT IS
 27 PROHIBITED UNDER § 3–303, OR § 3–304(A)(1) OR (2), ~~OR § 3–323~~ OF THE CRIMINAL
 28 LAW ARTICLE.

29 (C) “RESPONDENT” MEANS THE PERSON AGAINST WHOM AN ACTION FOR
 30 TERMINATION OF PARENTAL RIGHTS IS FILED UNDER THIS SUBTITLE.

31 **5–1402.**

32 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AFTER A
 33 TRIAL, A COURT MAY TERMINATE THE PARENTAL RIGHTS OF A RESPONDENT UNDER
 34 THIS SUBTITLE IF THE COURT:

1 (1) DETERMINES THAT THE RESPONDENT HAS BEEN SERVED IN
2 ACCORDANCE WITH ~~THE MARYLAND RULES~~ § 5-1403(C) OF THIS SUBTITLE;

3 (2) (I) FINDS THAT THE RESPONDENT HAS BEEN CONVICTED OF AN
4 ACT OF NONCONSENSUAL SEXUAL CONDUCT AGAINST THE OTHER PARENT THAT
5 RESULTED IN THE CONCEPTION OF THE CHILD AT ISSUE IN AN ACTION UNDER THIS
6 SUBTITLE; OR

7 (II) FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE
8 RESPONDENT COMMITTED AN ACT OF NONCONSENSUAL SEXUAL CONDUCT AGAINST
9 THE OTHER PARENT THAT RESULTED IN THE CONCEPTION OF THE CHILD AT ISSUE
10 IN AN ACTION UNDER THIS SUBTITLE; AND

11 (3) FINDS BY CLEAR AND CONVINCING EVIDENCE THAT IT IS IN THE
12 BEST INTEREST OF THE CHILD TO TERMINATE THE PARENTAL RIGHTS OF THE
13 RESPONDENT.

14 (B) THE COURT MAY NOT TERMINATE PARENTAL RIGHTS UNDER
15 SUBSECTION (A) OF THIS SECTION IF THE PARENTS WERE MARRIED AT THE TIME OF
16 THE CONCEPTION OF THE CHILD AT ISSUE, UNLESS:

17 (1) THE RESPONDENT HAS BEEN CONVICTED OF AN ACT OF
18 NONCONSENSUAL SEXUAL CONDUCT AGAINST THE OTHER PARENT THAT RESULTED
19 IN THE CONCEPTION OF THE CHILD; OR

20 (2) THE PARENTS WERE SEPARATED IN ACCORDANCE WITH A
21 PROTECTIVE ORDER DURING THE TIME OF THE CONCEPTION OF THE CHILD AND
22 HAVE REMAINED SEPARATE AND APART SINCE THE TIME OF CONCEPTION; ~~OR~~

23 ~~(3) THE PARENTS WERE SEPARATED IN ACCORDANCE WITH A~~
24 ~~WRITTEN SEPARATION AGREEMENT DURING THE TIME OF THE CONCEPTION OF THE~~
25 ~~CHILD AND HAVE REMAINED SEPARATE AND APART SINCE THE TIME OF~~
26 ~~CONCEPTION.~~

27 (C) A TERMINATION OF PARENTAL RIGHTS UNDER THIS SECTION
28 TERMINATES COMPLETELY:

29 (1) A PARENT'S RIGHT TO CUSTODY OF, GUARDIANSHIP OF, ACCESS
30 TO, VISITATION WITH, AND INHERITANCE FROM THE CHILD; AND

31 (2) A PARENT'S RESPONSIBILITY TO SUPPORT THE CHILD, INCLUDING
32 THE RESPONSIBILITY TO PAY CHILD SUPPORT.

33 5-1403.

1 (A) AN ACTION FOR TERMINATION OF PARENTAL RIGHTS UNDER THIS
 2 SUBTITLE MAY BE FILED BY EITHER PARENT OF THE CHILD, ~~THE CHILD'S~~
 3 ~~COURT APPOINTED GUARDIAN, OR THE CHILD'S COURT APPOINTED ATTORNEY.~~

4 (B) ~~(1)~~ AN ACTION FOR TERMINATION OF PARENTAL RIGHTS ~~FILED BY A~~
 5 ~~PARENT~~ UNDER THIS SUBTITLE SHALL BE FILED WITHIN ~~7~~ 3 YEARS AFTER THE
 6 LATER OF:

7 ~~(1)~~ (1) THE DATE OF THE BIRTH OF THE CHILD CONCEIVED
 8 AS A RESULT OF THE NONCONSENSUAL SEXUAL CONDUCT; OR

9 ~~(2)~~ (2) THE DATE ON WHICH THE PARENT KNEW OR SHOULD
 10 HAVE KNOWN THE OTHER PARENT'S IDENTITY.

11 ~~(2)~~ ~~AN ACTION FOR TERMINATION OF PARENTAL RIGHTS FILED BY A~~
 12 ~~CHILD'S COURT APPOINTED GUARDIAN OR ATTORNEY UNDER THIS SUBTITLE~~
 13 ~~SHALL BE FILED BEFORE THE CHILD BECOMES AN ADULT.~~

14 ~~(C)~~ ~~A RESPONDENT SHALL FILE AN ANSWER TO A COMPLAINT FILED UNDER~~
 15 ~~THIS SUBTITLE NOT LATER THAN 30 DAYS AFTER SERVICE OF THE COMPLAINT,~~
 16 ~~UNLESS A LONGER PERIOD IS REQUIRED BY FEDERAL LAW.~~

17 ~~(D)~~ (C) (1) EXCEPT AS PROVIDED IN PARAGRAPH ~~(3)~~ (2) OF THIS
 18 SUBSECTION, WHEN THE RESPONDENT SHALL BE SERVED IN ACCORDANCE WITH
 19 RULE 2-121(A)(1) OF THE MARYLAND RULES.

20 (2) (I) WHEN PROOF IS MADE BY AFFIDAVIT THAT GOOD FAITH
 21 EFFORTS TO SERVE THE RESPONDENT IN ACCORDANCE WITH PARAGRAPH (1) OF
 22 THIS SUBSECTION HAVE NOT SUCCEEDED OR THAT THE RESPONDENT HAS ACTED
 23 TO EVADE SERVICE, THE COURT MAY ORDER ANY OTHER MEANS OF SERVICE THAT
 24 THE COURT CONSIDERS APPROPRIATE UNDER THE CIRCUMSTANCES AND THAT IS
 25 REASONABLY CALCULATED TO GIVE ACTUAL NOTICE OF THE PROCEEDING TO THE
 26 RESPONDENT.

27 ~~(2)~~ (II) THE COURT SHALL RULE ON ANY MOTION FOR
 28 ALTERNATIVE SERVICE UNDER THIS ~~SUBSECTION~~ PARAGRAPH WITHIN 15 DAYS
 29 AFTER THE FILING OF THE MOTION.

30 ~~(3)~~ ~~THE COURT MAY NOT REQUIRE PUBLICATION OF THE NAME OF OR~~
 31 ~~PERSONALLY IDENTIFYING INFORMATION ABOUT THE PETITIONER OR THE CHILD.~~

32 ~~(D)~~ (D) (1) A SCHEDULING CONFERENCE SHALL BE HELD WITHIN 60
 33 DAYS AFTER SERVICE OF THE COMPLAINT.

1 (2) AT THE SCHEDULING CONFERENCE, THE COURT:

2 (I) SHALL ISSUE A SCHEDULING ORDER, TAKING INTO
3 CONSIDERATION THE BEST INTEREST OF THE CHILD, THE TIME NEEDED FOR
4 DISCOVERY, AND THE INTEREST OF JUSTICE; AND

5 ~~(II) MAY DETERMINE TEMPORARY CUSTODY OF THE MINOR~~
6 ~~CHILD.~~

7 (II) SHALL ADVISE THE RESPONDENT THAT:

8 1. THE RESPONDENT MAY REFUSE TO TESTIFY OR TO
9 OFFER EVIDENCE; AND

10 2. NO ADVERSE INFERENCE MAY BE DRAWN FROM THE
11 RESPONDENT'S REFUSAL TO TESTIFY OR TO OFFER EVIDENCE.

12 (3) A COMPLAINT FILED UNDER THIS SUBTITLE SHALL INCLUDE A
13 NOTICE TO THE RESPONDENT THAT A SCHEDULING CONFERENCE WILL BE HELD
14 WITHIN 60 DAYS AFTER SERVICE OF THE COMPLAINT.

15 5-1404.

16 (A) (1) EXCEPT AS PROVIDED IN ~~PARAGRAPH~~ PARAGRAPHS (2) AND (3)
17 OF THIS SUBSECTION, THE COURT SHALL HOLD A TRIAL ON TERMINATION OF
18 PARENTAL RIGHTS NOT LATER THAN 180 DAYS AFTER AN ANSWER TO THE
19 COMPLAINT IS FILED.

20 (2) UNLESS BOTH PARTIES AGREE OTHERWISE ~~OR THE COURT FINDS~~
21 ~~THAT IT IS IN THE BEST INTEREST OF THE CHILD TO PROCEED~~, IF A CRIMINAL
22 PROCEEDING INVOLVING THE SAME UNDERLYING FACTS IS PENDING AT THE TIME
23 AN ACTION TO TERMINATE PARENTAL RIGHTS UNDER THIS SUBTITLE IS FILED, OR
24 IF A CRIMINAL PROCEEDING INVOLVING THE SAME UNDERLYING FACTS IS
25 COMMENCED AFTER AN ACTION TO TERMINATE PARENTAL RIGHTS UNDER THIS
26 SUBTITLE IS FILED, THE COURT ~~MAY~~ SHALL STAY ALL FURTHER PROCEEDINGS IN
27 THE ACTION TO TERMINATE PARENTAL RIGHTS UNTIL THE CRIMINAL PROCEEDING
28 IS RESOLVED.

29 (3) THE COURT MAY STAY OR POSTPONE A TRIAL ON TERMINATION
30 OF PARENTAL RIGHTS FOR GOOD CAUSE.

31 (B) IN AN ACTION TO TERMINATE PARENTAL RIGHTS UNDER THIS
32 SUBTITLE:

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

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

5 (C) A PARTY'S TESTIMONY AND ANY OTHER INFORMATION OBTAINED FROM
6 THE PARTY IN A PROCEEDING UNDER THIS SUBTITLE AND ANY INFORMATION
7 DIRECTLY OR INDIRECTLY DERIVED FROM THE PARTY'S TESTIMONY OR THE OTHER
8 INFORMATION IS INADMISSIBLE AS EVIDENCE IN A CRIMINAL PROCEEDING AGAINST
9 THAT PARTY ~~IF~~:

10 ~~(1) THE CRIMINAL PROCEEDING INVOLVES THE SAME UNDERLYING~~
11 ~~FACTS; AND~~

12 ~~(2) THE EVIDENCE IS OFFERED FOR A PURPOSE OTHER THAN~~
13 ~~IMPEACHMENT.~~

14 5-1405.

15 (A) A PARTY TO A PROCEEDING UNDER THIS SUBTITLE IS ENTITLED TO THE
16 ASSISTANCE OF COUNSEL.

17 (B) ~~(1)~~ THE COURT SHALL REFER AN UNREPRESENTED PARTY TO THE
18 MARYLAND LEGAL SERVICES CORPORATION OR ITS DESIGNEE FOR ASSIGNMENT
19 OF COUNSEL THROUGH A QUALIFIED LEGAL SERVICES PROGRAM.

20 ~~(2) A PARTY IS NOT ENTITLED TO THE ASSISTANCE OF COUNSEL AT~~
21 ~~THE EXPENSE OF THE MARYLAND LEGAL SERVICES CORPORATION OR ITS~~
22 ~~DESIGNEE UNLESS THE PARTY IS INDIGENT.~~

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2017.