

HOUSE BILL 428

D4

7lr0542
CF SB 574

By: Delegates Dumais, Anderson, Angel, Arentz, Atterbeary, Aumann, Barkley, B. Barnes, Barron, Barve, Beidle, Branch, Bromwell, Busch, Carozza, Carr, Clippinger, Conaway, Cullison, Davis, Ebersole, Fennell, Folden, Fraser-Hidalgo, Frick, Frush, Gaines, Gilchrist, Glass, Glenn, Grammer, Gutierrez, Healey, Hettleman, Hill, Hixson, Hornberger, C. Howard, Jackson, Jameson, Jones, Kaiser, Kelly, Kipke, Kittleman, Korman, Krebs, Krimm, Lafferty, Lam, R. Lewis, Lierman, Lisanti, Luedtke, Malone, McComas, McCray, McIntosh, Metzgar, Miele, A. Miller, Moon, Morales, Morhaim, Oaks, Parrott, Patterson, Pena-Melnyk, Pendergrass, Platt, Proctor, Queen, Rey, Reznik, Robinson, Rose, Rosenberg, Sanchez, Sophocleus, Stein, Sydnor, Tarlau, Turner, Valderrama, Valentino-Smith, Waldstreicher, A. Washington, M. Washington, West, B. Wilson, C. Wilson, Wivell, K. Young, and P. Young

Introduced and read first time: January 26, 2017

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 7, 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;

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 prohibiting the court from requiring publication of the name or personally
 2 identifying information of the petitioner or the child; requiring the court to hold a
 3 trial on termination of parental rights within a certain period of time after an answer
 4 to the complaint is filed; authorizing the court to stay further proceedings in a
 5 termination of parental rights action until a certain criminal proceeding is resolved
 6 under certain circumstances; authorizing a respondent in a termination of parental
 7 rights action to refuse to testify or to offer evidence that may incriminate the
 8 respondent; specifying that no adverse inference may be drawn from the
 9 respondent's refusal to testify or to offer evidence; specifying that a party's testimony
 10 and certain other information in a termination of parental rights proceeding is
 11 inadmissible as evidence in a criminal proceeding against that party under certain
 12 circumstances; establishing that a party to a termination of parental rights
 13 proceeding is entitled to the assistance of counsel; requiring the court to refer ~~an~~
 14 ~~unrepresented party to the Maryland Legal Services Corporation or its designee for~~
 15 ~~assessment of counsel through a certain program~~ certain unrepresented parties to
 16 certain legal services organizations for assignment of counsel; requiring the court to
 17 appoint counsel for a party under certain circumstances; establishing that a party is
 18 not entitled to the assistance of counsel at the expense of the Maryland Legal
 19 Services Corporation or ~~its designee~~ to appointed counsel unless the party is
 20 indigent; defining certain terms; and generally relating to children conceived without
 21 consent and termination of parental rights.

22 BY adding to

23 Article – Family Law

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

26 Annotated Code of Maryland

27 (2012 Replacement Volume and 2016 Supplement)

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

30 **Article – Family Law**

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

32 **5–1401.**

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

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

1 (C) "RESPONDENT" MEANS THE PERSON AGAINST WHOM AN ACTION FOR
2 TERMINATION OF PARENTAL RIGHTS IS FILED UNDER THIS SUBTITLE.

3 5-1402.

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

7 (1) DETERMINES THAT THE RESPONDENT HAS BEEN SERVED IN
8 ACCORDANCE WITH THE MARYLAND RULES;

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

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

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

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

23 ~~(1) THE RESPONDENT HAS BEEN CONVICTED OF AN ACT OF~~
24 ~~NONCONSENSUAL SEXUAL CONDUCT AGAINST THE OTHER PARENT THAT RESULTED~~
25 ~~IN THE CONCEPTION OF THE CHILD;~~

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

29 ~~(3) THE PARENTS WERE SEPARATED IN ACCORDANCE WITH A~~
30 ~~WRITTEN SEPARATION AGREEMENT DURING THE TIME OF THE CONCEPTION OF THE~~
31 ~~CHILD AND HAVE REMAINED SEPARATE AND APART SINCE THE TIME OF~~
32 ~~CONCEPTION.~~

1 (C) A TERMINATION OF PARENTAL RIGHTS UNDER THIS SECTION
2 TERMINATES COMPLETELY:

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

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

7 5-1403.

8 (A) AN ACTION FOR TERMINATION OF PARENTAL RIGHTS UNDER THIS
9 SUBTITLE MAY BE FILED BY EITHER PARENT OF THE CHILD, THE CHILD'S
10 COURT-APPOINTED GUARDIAN, OR THE CHILD'S COURT-APPOINTED ATTORNEY.

11 (B) (1) AN ACTION FOR TERMINATION OF PARENTAL RIGHTS FILED BY A
12 PARENT UNDER THIS SUBTITLE SHALL BE FILED WITHIN 7 YEARS AFTER THE LATER
13 OF:

14 (I) THE DATE OF THE BIRTH OF THE CHILD CONCEIVED AS A
15 RESULT OF THE NONCONSENSUAL SEXUAL CONDUCT; OR

16 (II) THE DATE ON WHICH THE PARENT KNEW OR SHOULD HAVE
17 KNOWN THE OTHER PARENT'S IDENTITY.

18 (2) AN ACTION FOR TERMINATION OF PARENTAL RIGHTS FILED BY A
19 CHILD'S COURT-APPOINTED GUARDIAN OR ATTORNEY UNDER THIS SUBTITLE
20 SHALL BE FILED BEFORE THE CHILD BECOMES AN ADULT.

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

24 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,
25 WHEN PROOF IS MADE BY AFFIDAVIT THAT GOOD FAITH EFFORTS TO SERVE THE
26 RESPONDENT HAVE NOT SUCCEEDED OR THAT THE RESPONDENT HAS ACTED TO
27 EVADE SERVICE, THE COURT MAY ORDER ANY OTHER MEANS OF SERVICE THAT THE
28 COURT CONSIDERS APPROPRIATE UNDER THE CIRCUMSTANCES AND THAT IS
29 REASONABLY CALCULATED TO GIVE ACTUAL NOTICE OF THE PROCEEDING TO THE
30 RESPONDENT.

31 (2) THE COURT SHALL RULE ON ANY MOTION FOR ALTERNATIVE
32 SERVICE UNDER THIS SUBSECTION WITHIN 15 DAYS AFTER THE FILING OF THE
33 MOTION.

1 **(3) THE COURT MAY NOT REQUIRE PUBLICATION OF THE NAME OF OR**
2 **PERSONALLY IDENTIFYING INFORMATION ABOUT THE PETITIONER OR THE CHILD.**

3 **(E) (1) A SCHEDULING CONFERENCE SHALL BE HELD WITHIN 60 DAYS**
4 **AFTER SERVICE OF THE COMPLAINT.**

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

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

9 **(II) MAY DETERMINE TEMPORARY CUSTODY OF THE MINOR**
10 **CHILD.**

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

14 **5-1404.**

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

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

27 **(B) IN AN ACTION TO TERMINATE PARENTAL RIGHTS UNDER THIS**
28 **SUBTITLE:**

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

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

1 (C) A PARTY'S TESTIMONY AND ANY OTHER INFORMATION OBTAINED FROM
 2 THE PARTY IN A PROCEEDING UNDER THIS SUBTITLE AND ANY INFORMATION
 3 DIRECTLY OR INDIRECTLY DERIVED FROM THE PARTY'S TESTIMONY OR THE OTHER
 4 INFORMATION IS INADMISSIBLE AS EVIDENCE IN A CRIMINAL PROCEEDING AGAINST
 5 THAT PARTY IF:

6 (1) THE CRIMINAL PROCEEDING INVOLVES THE SAME UNDERLYING
 7 FACTS; AND

8 (2) THE EVIDENCE IS OFFERED FOR A PURPOSE OTHER THAN
 9 IMPEACHMENT.

10 5-1405.

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

13 (B) (1) (I) ~~THE COURT SHALL REFER AN UNREPRESENTED PARTY TO~~
 14 ~~THE MARYLAND LEGAL SERVICES CORPORATION OR ITS DESIGNEE FOR~~
 15 ~~ASSIGNMENT OF COUNSEL THROUGH A QUALIFIED LEGAL SERVICES PROGRAM.~~
 16 PETITIONER TO THE SEXUAL ASSAULT LEGAL INSTITUTE FOR ASSIGNMENT OF
 17 COUNSEL.

18 (II) THE COURT SHALL REFER AN UNREPRESENTED
 19 RESPONDENT TO ANOTHER QUALIFIED GRANTEE OF THE MARYLAND LEGAL
 20 SERVICES CORPORATION FOR ASSIGNMENT OF COUNSEL.

21 (III) IF COUNSEL FROM A DESIGNATED LEGAL SERVICES
 22 ORGANIZATION IS NOT AVAILABLE, THE COURT SHALL APPOINT COUNSEL FOR THE
 23 PARTY.

24 (2) A PARTY IS NOT ENTITLED TO THE ASSISTANCE OF COUNSEL AT
 25 THE EXPENSE OF THE MARYLAND LEGAL SERVICES CORPORATION ~~OR ITS~~
 26 ~~DESIGNEE~~ OR TO APPOINTED COUNSEL UNLESS THE PARTY IS INDIGENT.

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