

Chapter 3

(Senate Bill 2)

AN ACT concerning

**Family Law – Child Conceived Without Consent – Termination of Parental Rights
(Rape Survivor Family Protection Act)**

FOR the purpose of authorizing a court, under certain circumstances, to terminate the parental rights of an individual convicted of or found by clear and convincing evidence to have committed an act of nonconsensual sexual conduct against the other parent that resulted in the conception of a child; prohibiting the court from terminating parental rights under certain circumstances; specifying that a termination of parental rights under this Act terminates completely certain rights and responsibilities of a parent; specifying certain procedures for an action for termination of parental rights under this Act; authorizing the court to order certain means of service under certain circumstances; requiring the court to rule on a certain motion within a certain period of time; prohibiting the court from requiring publication of the name or personally identifying information of certain individuals; specifying that the failure of the court to advise the respondent of certain matters at a certain scheduling conference is not grounds to overturn a finding under this Act; requiring the court to hold a trial on termination of parental rights within a certain period of time after an answer to the complaint is filed; authorizing the court to stay further proceedings in a termination of parental rights action until a certain criminal proceeding is resolved under certain circumstances; authorizing a respondent in a termination of parental rights action to refuse to testify or to offer evidence that may incriminate the respondent; specifying that no adverse inference may be drawn from the respondent's refusal to testify or to offer evidence; specifying that a parent's testimony and certain other information in a termination of parental rights proceeding are inadmissible as evidence in a criminal proceeding against that parent under certain circumstances; authorizing the court, under certain circumstances, to order that court records of a proceeding under this Act be sealed or to require that filings be submitted and maintained in a form that protects the privacy of the parents and the child; establishing that a parent in a termination of parental rights proceeding is entitled to the assistance of counsel; requiring the court to refer ~~certain unrepresented parents to certain legal services organizations for assignment of counsel; requiring the court to appoint counsel for a parent under certain circumstances~~ an unrepresented parent to a certain legal services organization for assignment of counsel or to appoint counsel for an unrepresented parent; establishing that a parent is not entitled to the assistance of counsel at the expense of the Maryland Legal Services Corporation or to appointed counsel unless the parent is indigent; defining certain terms; making this Act an emergency measure; and generally relating to children conceived without consent and termination of parental rights.

BY adding to

Article – Family Law

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

Annotated Code of Maryland

(2012 Replacement Volume and 2017 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) “NONCONSENSUAL SEXUAL CONDUCT” MEANS AN ACT COMMITTED BY A RESPONDENT AGAINST THE OTHER PARENT THAT IS PROHIBITED UNDER:

(1) § 3–303 OR § 3–304(A)(1) OR (2) OF THE CRIMINAL LAW ARTICLE;

OR

(2) § 3–323 OF THE CRIMINAL LAW ARTICLE, IF THE OTHER PARENT IS A MINOR AND THE RESPONDENT WAS AT LEAST 4 YEARS OLDER THAN THE OTHER PARENT AT THE TIME OF THE ACT.

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

5–1402.

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

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

(2) (I) FINDS THAT THE RESPONDENT HAS BEEN CONVICTED OF AN ACT OF NONCONSENSUAL SEXUAL CONDUCT AGAINST THE OTHER PARENT THAT

RESULTED IN THE CONCEPTION OF THE CHILD AT ISSUE IN AN ACTION UNDER THIS SUBTITLE; OR

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

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

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

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

(2) THE PARENTS WERE SEPARATED IN ACCORDANCE WITH A PROTECTIVE ORDER DURING THE TIME OF THE CONCEPTION OF THE CHILD AND HAVE REMAINED SEPARATE AND APART SINCE THE TIME OF CONCEPTION.

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

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

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

5-1403.

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

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

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

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

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

(C) IN AN ACTION FOR TERMINATION OF PARENTAL RIGHTS FILED AGAINST A RESPONDENT BY A CHILD'S COURT-APPOINTED GUARDIAN OR ATTORNEY UNDER THIS SUBTITLE:

(1) THE OTHER PARENT SHALL BE JOINED AS A PARTY TO THE ACTION; AND

(2) THE ACTION MAY NOT PROCEED IF THE OTHER PARENT OBJECTS BEFORE THE COMMENCEMENT OF A TRIAL UNDER THIS SUBTITLE.

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

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

(3) THE COURT MAY NOT REQUIRE PUBLICATION OF THE NAME OR PERSONALLY IDENTIFYING INFORMATION OF THE OTHER PARENT OR THE CHILD.

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

(2) AT THE SCHEDULING CONFERENCE, THE COURT:

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

(II) AFTER PROVIDING THE PARENTS WITH AN OPPORTUNITY TO BE HEARD, MAY DETERMINE TEMPORARY CUSTODY OF THE MINOR CHILD; AND

(III) SHALL ADVISE THE RESPONDENT THAT:

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

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

(3) FAILURE OF THE COURT TO ADVISE A RESPONDENT UNDER PARAGRAPH (2)(III) OF THIS SUBSECTION IS NOT GROUNDS TO OVERTURN A FINDING UNDER THIS SUBTITLE.

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

5-1404.

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

(2) UNLESS BOTH PARENTS AGREE OTHERWISE OR THE COURT FINDS THAT IT IS IN THE BEST INTEREST OF THE CHILD TO PROCEED, 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 MAY STAY ALL FURTHER PROCEEDINGS IN THE ACTION TO TERMINATE PARENTAL RIGHTS UNTIL THE CRIMINAL PROCEEDING IS RESOLVED.

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

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

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

(C) A PARENT'S TESTIMONY AND ANY OTHER INFORMATION OBTAINED FROM THE PARENT IN A PROCEEDING UNDER THIS SUBTITLE AND ANY INFORMATION DIRECTLY OR INDIRECTLY DERIVED FROM THE PARENT'S TESTIMONY OR THE OTHER INFORMATION ARE INADMISSIBLE AS EVIDENCE IN A CRIMINAL PROCEEDING AGAINST THAT PARENT IF:

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

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

(D) THE COURT, ON ITS OWN MOTION OR ON PETITION, AND FOR GOOD CAUSE SHOWN, MAY ORDER THAT COURT RECORDS OF A PROCEEDING UNDER THIS SUBTITLE BE SEALED OR MAY REQUIRE THAT FILINGS BE SUBMITTED AND MAINTAINED IN A FORM THAT PROTECTS THE PRIVACY OF THE PARENTS AND THE CHILD.

5-1405.

(A) A PARENT IN A PROCEEDING UNDER THIS SUBTITLE IS ENTITLED TO THE ASSISTANCE OF COUNSEL.

(B) (1) ~~(I) THE COURT SHALL REFER AN UNREPRESENTED PETITIONER PARENT TO THE SEXUAL ASSAULT LEGAL INSTITUTE FOR ASSIGNMENT OF COUNSEL.~~

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

~~(III) IF COUNSEL FROM A DESIGNATED LEGAL SERVICES ORGANIZATION IS NOT AVAILABLE, THE COURT SHALL APPOINT COUNSEL FOR THE PARENT:~~

(I) REFER AN UNREPRESENTED PARENT TO A QUALIFIED GRANTEE OF THE MARYLAND LEGAL SERVICES CORPORATION FOR ASSIGNMENT OF COUNSEL; OR

(II) APPOINT COUNSEL FOR AN UNREPRESENTED PARENT.

(2) A PARENT IS NOT ENTITLED TO THE ASSISTANCE OF COUNSEL AT THE EXPENSE OF THE MARYLAND LEGAL SERVICES CORPORATION OR TO APPOINTED COUNSEL UNLESS THE PARENT IS INDIGENT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act ~~shall take effect October 1, 2018~~ is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved by the Governor, February 13, 2018.