

# THE DAILY RECORD

Maryland's trusted source for business, legal and government news

## The correct call on terminating rapists' parental rights

By: Commentary: May 24, 2018



David Bulitt (Maximilian Franz/The Daily Record)

In a period in American history that has seen a dramatic increase in public awareness of sexual assault, it was about time Maryland finally passed a law that permits rape victims to go to court to terminate the parental rights of a rapist.

The bill was signed in February by Gov. Larry Hogan after no fewer than nine failed attempts over more than a decade to get the measure through the state legislature.

"This is an important day for the state of Maryland," Hogan said at the bill signing. "I know it's a long time coming."

It certainly was a long haul. The legislation died in the final hours of the General Assembly session last year. Before passage of the bill, which took effect immediately after Hogan signed, Maryland had been one of only six states that permitted perpetrators of a sexual assault that results in pregnancy to claim parental rights concerning the child.

"It's a change in the way Maryland is treating women and allegations of rape," Lisa C. Jordan, executive director of the Maryland Coalition Against Sexual Assault, said after the bill was signed. "It says we respect you enough to allow you to go to court and prove your case." Under the new law, a rape victim is permitted to file a civil suit against her rapist in an effort to terminate his parental rights. Like 25 of the states that allow such lawsuits, Maryland requires only that the woman prove the rape under the standard of "clear and convincing evidence." The man need not be convicted in criminal court as long as the woman is successful in pursuing her case under the less stringent "clear and convincing" standard.

Rapists' parental rights represent one of those "quirks" of the common law that is more than a quirk and that can do real harm to women and to society. The right to have and raise a family is

protected under the U.S. Constitution and our courts will presume a person has parental rights concerning his biological child, no matter what the circumstances of the child's conception may be.

That is why Maryland, like all the other states that took similar legislative action, was required to pass legislation permitting rapists to be denied their parental rights – after a court decides that there is sufficient proof of the rape and of who the perpetrator was.

For a person to benefit in some way from a hideous, violent act by being able to enjoy the rights of fatherhood and to play a role in his child's life seems abhorrent on many levels. In addition, a woman who decides to raise a child conceived as the result of a rape would likely have to interact with the rapist on a frequent basis about custody and visitation issues and child support.

For a rape victim, the trauma of the assault stays with her for a lifetime, emotionally and physically. Forcing her to confront the perpetrator for decades over pick-ups and drop-offs, day-to-day parenting issues or collection of support payments effectively sentences her to decades of punishment for the rapist's crime. Some women will no doubt prefer to terminate their pregnancy rather than face their rapist.

I have little doubt that current social changes, in which society is becoming more sensitive to women's claims of sexual assault and harassment, had something to do with this bill's passage after more than a decade. And it did not go unnoticed, when the bill fell just short of approval in the final hours of last year's session, the conference committee that failed to reach agreement on the details of the bill was composed entirely of men. This appearance of insensitivity to women's rights was a factor that stirred leaders of both legislative chambers to make it a priority in 2018.

"It has taken a long time to get this through and it's not a slam dunk, but it gives women access to the courts in these absolutely awful cases," said Del. Kathleen M. Dumais, D-Montgomery and a major proponent of the legislation. "There are not a lot of women in this situation, but I'm very pleased that those that are now have an avenue that did not exist before."

She is not the only one.

*David Bullit is a family law attorney and principal with Joseph, Greenwald & Laake P.A. in Rockville. He can be reached at [dbullit@jgllaw.com](mailto:dbullit@jgllaw.com).*