



## PROTECTING VICTIMS' RIGHTS WHEN CHILDREN ARE BORN AS A RESULT OF SEXUAL ASSAULT

The Vermont Network Against Domestic and Sexual Violence strongly supports H.88, related to parental rights and responsibilities involving a child conceived as a result of a sexual assault. Existing Vermont law provides no specific protection in this regard to a victim of sexual assault who becomes pregnant as a result of the assault. Current laws leave victims vulnerable to a lifetime of ongoing harassment and torment at the hands of perpetrators through the family court system. H.88 seeks to remedy this situation.

- **A 2007 ruling from the Vermont Supreme Court specifically cited the gap in Vermont's statutes in a case that overturned a family court's ruling that a perpetrator of sexual assault should be barred from seeking parental rights.**<sup>1</sup> In that case, the Supreme Court remanded the case back to the family court, insisting that the minor victim of sexual assault needed to follow normal family court processes for determination of parental rights and responsibilities. Additionally, the Network has become aware of at least one other situation in Vermont in which a victim of sexual assault is being forced to facilitate visitation for the convicted rapist with her child who was conceived as a result of the assault. This situation is unconscionable and it is clearly in the legislature's hands to provide a remedy.
- **H.88 would create a mechanism in family court for sexual assault victims to petition for permanent sole legal parental rights and responsibilities and exclusive parent-child contact.** Such an order would basically prohibit the perpetrator from ever submitting a motion to request parental rights or contact in the future.
- **This bill would give victims a process to ask the court to prevent the perpetrator from ever gaining access to the child.** It does not create an *automatic* prohibition against rapists seeking custody or visitation (which takes the decision away from the victim and prevents any possibility of future child support).
- **The victim would need to prove to the court by *clear and convincing evidence* that she was sexually assaulted by the other party and that the pregnancy was a result of the assault.** This is a high burden of proof and is the same standard used in proceedings for

termination of parental rights. Most states that already offer this protection to sexual assault victims use the standard of clear and convincing evidence.

- **At least 20 other states** have passed some form of law to prevent sexual assault perpetrators from gaining custody of and visitation with children born as a result of sexual assault.
- **The Vermont Network recommends amending H.88 to also include circumstances in which a victim of sexual assault may want to place the child for adoption.** Current law would require the victim to obtain permission from the perpetrator in order to place a child born from the assault for adoption. The VT Supreme Court referred to this problem in their 2007 opinion and acknowledged the lack of a remedy in the Vermont statutes. It is critically important that all options be available to a victim of sexual assault who finds herself pregnant as a result of the assault, and adoption is an option that some women choose.
- A three-year longitudinal study of rape-related pregnancy in the U.S., published in the American Journal of Obstetrics and Gynecology (1996, vol. 175, pp. 320-325), found that 5% of rape victims of reproductive age (age 12-45) became pregnant as a result of rape, with the majority of pregnancies in adolescents. Of these:
  - 5.9% placed the child for adoption
  - 32.2% kept the child
  - 50% terminated the pregnancy
  - 11.8% miscarried
- **Most rapes do not lead to criminal convictions. It is vital that Vermont's family law NOT rely on a criminal conviction to trigger protections for a rape victim who has had a child conceived as a result of sexual assault.** Only about 40% of attacks are reported to police. Even in those cases reported to police, statistics indicate that only 10% lead to a felony conviction. This means that, factoring in unreported rapes, only about 3% of rapists will ever spend a day in prison.<sup>2</sup> Fashioning a family law policy which requires a conviction would create the illusion of progress for rape survivors without effectively addressing their needs.

**The healing process begins with empowerment and regaining the control lost in an assault.**

Victims of sexual assault must be able to reclaim control of their own bodies and lives.

Decisions surrounding pregnancy resulting from rape are very personal decisions in which victims deserve a full range of options without judgment or coercion from others. It is cruel and fundamentally disrespectful not to recognize that a rape victim's custody or adoption case

is different than a case involving a child who was not conceived through sexual assault. H.88 would support rape survivors who have a child after being assaulted and would prevent the family law system from inflicting additional harm on sexual assault victims.

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<sup>1</sup> LeClair v. Reed ex rel. Reed, 182 Vt. 594 (2007); 939 A.2d 466, 2007 VT 89

302(a). As the family court noted, at least one state legislature has seen fit to deny standing to contest a termination of parental rights to “a biological father of [a child] conceived as a result of rape or incest.” N.M. Stat. Ann. § 32A-5-19 (1978). Our Legislature, however, made no such exception in the law it adopted, and instead provided broad standing, via § 302, for “any person” claiming to be the father of a child to pursue a parentage action. See also 15A V.S.A. § 2-402 (enumerating the persons from whom consent for adoption is not required and allowing for adoption without consent of “a person whose parental relationship to the minor has been judicially terminated or determined not to exist”). *Id.* § 2-402(a)(2). Our statutes do not expressly or implicitly limit the class of people with standing to bring parentage actions.

<sup>2</sup> The probability statistics are compiled by the National Center for Policy Analysis from US Department of Justice statistics. See <http://www.rainn.org/get-information/statistics/reporting-rates>.