



Rape Survivors Child Custody Act (RSCCA) Policy Implications for Vermont

What is RSCCA?

The Rape Survivors Child Custody Act (RSCCA) is part of a federal law (P.L. 114-22) passed in May 2015 to incentivize states to enact child custody statutes that prevent men who father children through sexual assault from having visitation rights or custody over those children. Congress reasoned that women who chose to raise children conceived of sexual assault should not have to fight custody battles against their rapists.

The federal law seeks to have states enact statutory changes that allow “the mother of any child conceived through rape to seek a court-ordered termination of the parental rights of her rapist with regard to that child, which the court is authorized to grant upon clear and convincing evidence of rape.” (P.L. 114-22, Sec. 404). “Termination” is defined as “a complete and final termination of the parent’s right to custody of, guardianship of, visitation with, access to, and inheritance from a child.” (P.L. 114-22, Sec. 402(2)(A)).

States that enact qualifying child custody laws are entitled to up a 10% increase in their STOP Violence Against Women and VAWA Sexual Assault Services formula grants.

What is the potential fiscal impact for Vermont?

Although the actual formula amount varies each year, historical numbers suggest that Vermont could receive up to an additional \$100,000 in total funding to improve sexual assault victim services and the criminal justice system’s response to sexual assault.

How does Vermont’s current law work and does it comply with RSCCA?

In 2013, Act 197 (H.88) became law. Act 197 amended Vermont’s parental rights and responsibilities statute to allow mothers of children conceived of rape to seek sole parental rights and responsibilities (or sole “custody”) without any visitation for the offending father. The mother must prove that the offending father sexually assaulted her, and the child was conceived as a result of the sexual assault. 15 V.S.A. §§ 665(f)(1) and (2). The act of sexual assault can be demonstrated one of two ways: A) a sexual assault conviction, as defined by the statute, or B) by clear and convincing evidence “that the child was conceived as a result of the nonmoving parent sexually assaulting or sexually exploiting the moving parent” and “such an order is in the best interests of the child.” 15 V.S.A. § 665 (f)(2).

Where the offending father was convicted of sexually assaulting the mother, an order awarding sole custody to the mother cannot be modified in any way. 15 V.S.A. § 665 (f)(1)(A). Where

the sexual assault is proven by clear and convincing evidence, either party can ask the court to modify the order by showing an extraordinary, real, substantial, and unanticipated change of circumstances. 15 V.S.A. § 665(f)(2)(C). In other words, in cases where the offending father was not convicted of sexual assault, the offending father could later ask the court visitation, although he would have to meet a very high standard in order to succeed.

In August 2016, VCCVS submitted an application to the Department of Justice's Office of Violence Against Women (OVW) a request the RSCCA bonus based upon Vermont's Act 197 child custody provisions. Attorney General Bill Sorrell supported the state's application with a letter outlining how Vermont law complies with the RSCCA requirements.

In September 2016, VCCVS received notice from OVW that Vermont did not qualify for a RSCCA bonus due to the provision in Section 665(f) that allows for a possible modification of the child custody order in cases where the underlying sexual assault is proven by clear and convincing evidence instead of by conviction. *See* 15 V.S.A. § 665(f)(2)(C). As a result, such orders are not "complete and final" according to OVW's interpretation of RSCCA.

What legislative change is needed to receive the additional federal bonus funds for sexual assault services and prosecution?

Ultimately, in order to benefit from the RSCCA bonus, Vermont's statute must provide regardless of whether the underlying sexual assault is proven by conviction or by clear and convincing evidence, that an order awarding sole parental rights and responsibilities to the mother of a child conceived by rape cannot be later modified. Additionally, state inheritance law needs to be clarified to ensure that the offending father cannot inherit from a child conceived of sexual assault where the mother has obtained an Act 197 child custody order.

A bill to amend the statute should provide the following:

Strike 15 V.S.A. § 665 (f)(1)(A) and (B).

Strike 15 V.S.A. § 665 (f)(2)(B) and (C).

Add 15 V.S.A. § 665(f)(4):

Upon issuance of a rights and responsibilities order pursuant to this subdivision (f), the Court shall not issue a parent-child contact order and shall terminate any existing parent-child contact order concerning the child and the nonmoving parent. An order issued in accordance with this subdivision (f) shall be permanent and shall not be subject to modification.

Add to 14 V.S.A. § 315:

A parent shall not inherit from a child conceived of sexual assault who is the subject of a parental rights and responsibilities order issued pursuant to 15 V.S.A. § 665(f).

Which states have enacted qualifying laws?

Alaska, Colorado, Florida, Georgia, Hawaii, Indiana, Iowa, Maine, Michigan, Missouri, Texas, and Wisconsin applied for and received a RSCCA bonus for FY16. Other states, like Vermont, allow for custody orders in "clear and convincing evidence" cases, but they either did not apply for funding or their statutes did not meet the RSCCA standard for other reasons.