



Defenders of Children

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1

RAPE SURVIVOR CHILD CUSTODY ACT

**An Overview of the Law
and Its Impact on Children and Families**

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2

RAPE SURVIVOR CHILD CUSTODY ACT

Title IV of the Justice for Victims of Trafficking Act

H.R. 1257 (114th Cong.)
Public Law No. 114-22 (2015)



3

RAPE SURVIVOR CHILD CUSTODY ACT

Congressional Findings

Tens of thousands of women become pregnant through rape every year

A significant number of the women who become pregnant through rape carry to term, deliver, and raise those children

Rape is one of the most under-prosecuted serious crimes

It is estimated that fewer than 5% of rapes result in a criminal conviction of the rapist

Men who father children through rape should be prohibited from having parental rights (legal decision-making, parenting time, and/or visitation) over those children



4

RAPE SURVIVOR CHILD CUSTODY ACT

The Problem

At the time (2015), only 6 states had laws permitting the mother of a child conceived through rape to ask a court to terminate their rapist's parental rights to that child based on the highest civil standard of proof: clear and convincing evidence

Most states required the mother's rapist to be convicted of rape based on the significantly higher criminal standard of proof beyond a reasonable doubt

Some states did not (and still do not) permit the mother to fully terminate their rapist's parental rights even after a conviction



5

CLEAR AND CONVINCING EVIDENCE

"The clear and convincing standard is reserved for cases where substantial interests at stake require an extra measure of confidence by the factfinders in the correctness of their judgment, though not to such degree as is required to convict of crime."

"[A] party who has the burden of proof by clear and convincing evidence must persuade the [judge or jury] that his or her claim is highly probable."

State v. Renforth, 155 Ariz. 385, 387, 388 (Ct. App. 1987)



6

RAPE SURVIVOR CHILD CUSTODY ACT

Purpose

To encourage states to enact legislation providing for the full and final termination of the parental rights of rapists based on clear and convincing evidence that the child was conceived through rape.



7

RAPE SURVIVOR CHILD CUSTODY ACT

Mechanism

Permits the U.S. Attorney General to increase STOP and SASP formula awards to states whose laws permit the mother of any child conceived through rape to seek the court-ordered termination of the parental rights of the mother's rapist to that child based on clear and convincing evidence that the child was conceived through rape.



8

RAPE SURVIVOR CHILD CUSTODY ACT

National Financial Impact

Annual Request: \$1.5M Annual Award: \$1.5M

Source: OVW, DOJ

75% must be used to supplement SASP

(primarily nonprofit, nongovernmental sexual assault services including hotlines, helplines, crisis intervention, medical care, counseling, and other supportive services)

25% must be used to supplement STOP

(primarily state-focused victim services, including Sexual Assault Response Teams)



ARIZONA

SB 1007 (2021)

An Act Amending A.R.S. § 8-533 Relating to Termination of Parent-Child Relationship



A.R.S. § 8-533

B. Evidence sufficient to justify the termination of the parent-child relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child:

* * *

12. Clear and convincing evidence that the parent committed a sexual assault against the petitioning parent and the child was conceived as a result of the sexual assault. If the parent who is the subject of the petition pleads guilty to or is convicted of a violation of section 13-1406 [sexual assault] or a violation of an offense in another jurisdiction that if committed in this state would be [sexual assault], the court may accept the guilty plea or conviction as evidence that the child was conceived as a result of a sexual assault by that parent.



11

A.R.S. § 25-416

If a person has been convicted of sexual assault under section 13-1406 and the sexual assault led to the birth of a child, the convicted person has none of the rights prescribed in this chapter related to legal decision-making or parenting time in regard to the child.

A.R.S. § 25-501

A. Except as provided in subsection F of this section, every person has the duty to provide all reasonable support for that person's natural and adopted minor, unemancipated children . . .

* * *

F. The court may determine that a parent is not obligated to contribute to the support of the parent's minor child if maternity or paternity is the result of the parent's sexual contact with a person who, as a result of that contact, has been found guilty of sexual conduct with a minor under section 13-1405 or sexual assault under section 13-1406 . . .



12

LEGAL IMPACTS

Eliminates the requirement of a criminal conviction

Makes deadlines imposed by statutes of limitations irrelevant

Permits victims of rape to terminate their rapists' parental rights in Juvenile Court using the very same "clear and convincing" standard of proof that has long been used to terminate the rights of parents who have abused, neglected, or abandoned their children

Provides victims of rape with a means to avoid having to engage in lengthy and repeated child custody battles with their rapists in Family Court

Reduces the power of rapists to threaten to seek parental rights over children conceived through rape as a means of discouraging victims from reporting rape and/or assisting law enforcement agencies and county attorneys in investigating and prosecuting rape



13

HEALTH IMPACTS

Increases the physical and emotional safety of victims of rape

Increases the physical and emotional safety of children conceived through rape

Reduces additional trauma and facilitates healing for victims of rape

Provides an alternative means of removing the rapist from the victim's life when abortion is not an option



14



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