

Rape and child custody A question of proof

When alleged rapists sue for parental rights

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JAIME MELENDEZ was a 20-year-old with a chequered past when he raped H.T., a 14-year-old girl, in Dedham, Massachusetts in 2009. H.T. was often home alone after school; her mother worked at the local hospital and her father was dead. Mr Melendez visited her when she was on her own, coerced her to have sex and then threatened her to stay silent. When H.T. became pregnant her doctor called the police. In 2011 Mr Melendez pleaded guilty to rape of a minor.

The judge sentenced him to 16 years of probation and ordered him to submit to a family court, which in 2012 ordered him to pay child support until the infant reaches adulthood. Before then, Mr Melendez had shown no interest in his daughter, but afterwards he demanded to be allowed to visit her. He said it was his right as a father; adding that he would drop the request if he no longer had to pay child support.

H.T. does not want Mr Melendez anywhere near her or her family. And indeed, he has not visited them. But the courts have not thrown out his lawsuit, which has been grinding along for two years now. H.T.'s lawyer, Wendy Murphy, calls it barbaric. "You would never say to a person who suffered a crime, 'Sorry, we're going to let this guy further destroy your life'."

In Massachusetts no law explicitly restricts the parental rights of men who father a child through rape. So rapists can petition for custody or visiting privileges, and generally make life miserable for survivors. The same is true in 16 other states plus Washington, DC.



Claudio Munoz

It is not clear how common such cases are, since custody battles take place in family courts where records are often sealed. Judges in those courts prefer to keep a father in the picture, but can cut him out if he is abusive or neglectful.

Being convicted of a violent felony can often be grounds for revoking parental rights, especially if the parent in question goes to prison or the crime involved a member of the family. But judges have wide discretion to weigh the circumstances of each family that appears before them. The emphasis is always on the best interests of the child. Massachusetts allows a court to terminate parental rights if “the parent has been convicted of a felony that the court finds is of such a nature that the child will be deprived of a stable home for a period of years.” Common sense suggests that should apply to rape, and most judges are sensible; but not all.

Furthermore, most rapists are never convicted. The crime is hard to prove, since it often comes down to the victim’s word against her attacker’s. Only 12% of rapes result in an arrest, let alone a conviction, estimates the Bureau of Justice Statistics. Paternity, by contrast, is easy to prove, thanks to DNA tests. So there are cases where the court knows a man is the father but does not know he is a rapist.

Some of these men discover they are fathers only when the state targets them for child support, as single mothers must identify them to qualify for government assistance. This prompts some to file a lawsuit of their own. “They just say: ‘If I’m going to pay for it, I’m going to see it,’” says Rebecca Kiessling, a family-law attorney. It can be a way to punish victims, or intimidate survivors into refusing to testify against them. “Like with rape, this is just about power and control,” says Ms Kiessling.

Angela Grogg says that her daughter became pregnant from rape in 2010, when she was 14. The father of Mrs Grogg’s grandson was tried for rape but acquitted in 2012. He maintains his innocence and sued for visitation rights. Mrs Grogg has waged a public battle against him. A Missouri judge finally terminated his parental rights this year, after \$60,000 in legal bills. “We’ve got thousands of e-mails from women who are going through [the same thing],” says Mrs Grogg.

An estimated 25,000-32,000 women become pregnant from rape each year. Activists such as the Rape, Abuse and Incest National Network want state laws to offer better protection for those who choose to keep and raise their children. Most of all, they want an easier standard of proof. Rather than requiring a criminal conviction, they say it would be more reasonable to let a judge terminate a father’s parental rights on the basis of “clear and convincing evidence” that the child was conceived in rape. This is the same standard family courts use to decide whether a child has been abused or neglected.

Eight states already end parental rights if there is “clear and convincing” evidence that the mother was raped. Two more are about to follow suit, and a federal bill introduced by Debbie Wasserman Schultz, a Florida congresswoman, promises federal grants to others that do likewise. That won’t help all victims. But it is a start.

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