

SB

134

<TARGET><BILL>SB 134</BILL><SUBJECT>SB
134</SUBJECT><COMM>SHSS30</COMM></TARGET>

WHILE IN SESSION
State Capitol
Room 11
Juneau, AK 99801
(907) 465-4930



ALASKA SENATE DEMOCRATS

WHILE IN ANCHORAGE
1500 W. Benson Blvd.
Room 229
Anchorage, AK 99503
(907) 269-0174

SENATOR BERTA GARDNER

SENATE DEMOCRATIC LEADER
Senate District 1

Sponsor Statement

SB 134 - *“An Act relating to the appointment of guardians ad litem for parents; relating to petitions for termination of parental rights; relating to the scope of the Alaska Adoption Rules; and amending Rules 1 and 6, Alaska Adoption Rules.”*

Nationally, the Rape Survivor Child Custody Act passed under Title IV of the Justice for Victims of Trafficking Act, in the 114th congress. This bill encourages states to have statutes allowing parental rights to be terminated in cases where conception occurred from clear and convincing evidence of rape.

Under this Act, states with these statutes in place would be eligible for additional funding for Violence Against Women Act (VAWA) formula grants. Currently, Alaska meets the requirements set forth by this act.

However, the ability for parental custody to be terminated on these grounds was placed under Title 25 in chapter 23 which deals with adoption. The statute was updated in the 15th legislature to allow for women in independent proceedings (outside of adoption or child-in-need-of-aid cases) the ability to terminate parental rights of rapist fathers.

Existence of these statutes does not seem to be widely known. The Rape, Abuse & Incest National Network (RAINN) erroneously interprets Alaska’s statute as pertaining only to adoption cases. In addition, victim advocacy groups and family law lawyers within the state of Alaska have claimed that they were not aware of the applicability of existing statutes.

This bill clarifies that a parent who chooses to keep a child conceived through rape has the ability to sever ties with their rapist if they so desire.

If a rapist pursues custody or visitation, the victim is forced to interact with them repeatedly in a legally-sanctioned proceeding. Unwelcome interactions with an abuser can interfere with a survivor’s ability to raise a healthy child.

There are currently 45 states with statutes that allow for the parental rights of rapist fathers to be reduced or terminated. This bill is intended to make clear that all women have this ability in Alaska.

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 1/16/18

FURTHER: Judiciary

DATE TURNED
IN TO OFFICE: 4/6/18

Health and Social Services Committee considered SENATE BILL NO. 134

SB 134 TERM. OF PARENTAL RTS; GUARDIANS AD LITEM

"An Act relating to the appointment of guardians ad litem; relating to petitions and proceedings for termination of parental rights; and amending Rules 1 and 6, Alaska Adoption Rules."

and recommends:

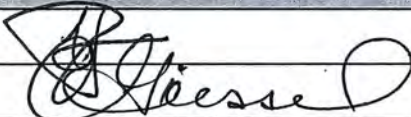
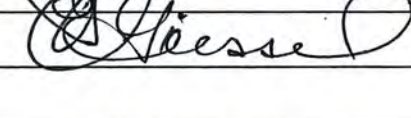

- be replaced with CS _____ (_____) Same Title New Title
- adopt previous CS _____ (_____) Same Title New Title
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
EED	MVA
DEC	DNR
DFG	DPS
GOV	REV
DHS	DOT
AJS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DHS			✓	1

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Begich	✓			
	Griessel	✓			
CHAIR: 	Wilson	✓			

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SB 134 Sectional Analysis

Section 1. Conforms a cross-reference for purposes of court venue for the termination of parental rights on the grounds that the parent has committed an act constituting sexual assault, sexual abuse of a minor, or incest that resulted in the conception of the child, consistent with section 11 of this bill.

Section 2. Conforms a cross-reference for purposes of the exception to consent to adoption required consistent with section 11 of this bill.

Section 3. Authorizes the court to appoint a guardian ad litem for cases involving petitions for the termination of parental rights of a parent who has committed an act constituting sexual assault, sexual abuse of a minor, or incest that resulted in the conception of a child under section 11 of this bill.

Section 4. Conforms a cross-reference for purposes of a decree terminating parental rights on the grounds specified under section 11 of this bill.

Section 5. Conforms a cross-reference for purposes of inheritance rights retained after termination of parental rights on the grounds specified under section 11 of this bill.

Section 6. Conforms a cross-reference for purposes of appeal limitations consistent with section 11 of this bill.

Section 7. Conforms a cross-reference for purposes of restricting the inspection of papers and records relating to a proceeding for the termination of parental rights on the grounds specified under section 11 of this bill.

Section 8. Conforms a cross-reference for purposes of the confidentiality of a child who is the subject of a petition for the termination of parental rights or a biological parent whose parental rights have been terminated on the grounds specified under section 11 of this bill.

Section 9. Conforms a cross-reference for purposes of preventing the disclosure of a natural parent's identity when the parent's rights were terminated on the grounds specified under section 11 of this bill.

Section 10. Conforms a cross-reference for purposes of a court order for the preparation of a new birth certificate without reference to a parent whose parental rights have been terminated on the grounds specified under section 11 of this bill.

Section 11. Restructures AS 25.23.180(c) to clarify that termination for parental rights may be ordered in an independent proceeding on the grounds that a parent committed an act constituting sexual assault, sexual abuse of a minor, or incest that resulted in the conception of a child.

Section 12. Conforms a cross-reference for purposes of providing the parties who may initiate a proceeding for the termination of parental rights on the grounds specified under section 11 of this bill.

Section 13. Conforms a cross-reference for purposes of allowing the court, with certain limitations, to vacate a decree terminating parental rights on the grounds specified under section 11 of this bill.

Section 14. Conforms a cross-reference for purposes of providing counsel for a respondent to a petition for the termination of parental rights on the grounds specified under section 11 of this bill.

Section 15. Conforms a cross-reference for purposes of establishing that proceeding for termination of parental rights on the grounds specified under section 11 of this bill do not affect civil remedies.

Section 16. Adds a new subsection to AS 25.23.180 to clarify that a petition for termination of parental rights for the grounds specified in section 11 of the bill may be filed to initiate an independent proceeding not connected to a petition for adoption or a proceeding under AS 47.10.

Section 17. Conforms the citation for purposes of legal representation and guardian ad litem services through the office of public advocacy for the termination of parental rights on the grounds specified under section 11 of this bill.

Section 18. Describes how AS 25.23.180, as amended by this bill, has the effect of changing court rules.

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version: SB 134
Fiscal Note Number: _____
() Publish Date: _____

Identifier: SB134-DHSS-CSM-3-30-18
Title: TERMINATION OF PARENTAL RTS;GUARDIANS
Sponsor: GARDNER
Requester: Senate HSS

Department: Department of Health and Social Services
Appropriation: Children's Services
Allocation: Children's Services Management
OMB Component Number: 2666

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019 Appropriation Requested	Included in Governor's FY2019 Request	Out-Year Cost Estimates					
			FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed? n/a

Why this fiscal note differs from previous version/comments:

Not applicable; initial version.

Prepared By:	Christy Lawton, Division Director	Phone:	(907)269-8018
Division:	Office of Children's Services	Date:	02/12/2018
Approved By:	Shawnda O'Brien, Asst. Commissioner	Date:	02/12/18
Agency:	Health and Social Services		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2018 LEGISLATIVE SESSION

BILL NO. SB134

Analysis

SB 134 amends Alaska Adoption Rules by providing that a petition for involuntary termination of parental rights may be filed in a proceeding that is independent from an adoption or a proceeding under AS 47.10. In addition, SB 134 includes authority to allow guardian ad litem to be appointed to independent proceedings which involve involuntary termination of parental rights.

There is no fiscal impact to the Office of Children's Services related to SB 134, as written.

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SENATE DEMOCRATIC LEADER

Senate District 1

SB 134 Testifiers:

Aliza Kazmi, Alaska Network on Domestic Violence and Sexual Assault

LEGISLATIVE RESEARCH SERVICES

29th Alaska Legislature
LRS Report 16.033
August 27, 2015



(907) 465-3991 phone
(907) 465-3908 fax
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Parental Rights for Children Conceived through Rape

Patricia Young, Legislative Analyst

You wished to know about current laws in Alaska that deal with parental rights for women with children conceived through rape. Specifically, you asked if any provision in current law protects such women and children from custody being awarded to the biological fathers. You also asked for information on the status of legislation in Congress that would provide grants to states with such laws under certain conditions.

Alaska Statute § 25.23.180(c)(3) provides for the involuntary termination of parental rights on the grounds that the biological parent conceived the child through an act of sexual assault or through sexual abuse of a minor and that termination of such rights is in the best interests of the child. Language specific to a private action for termination on those grounds resides specifically in AS § 25.23.180(e), which reads follows (with emphasis added):

(e) A petition for termination of the relationship of parent and child made in connection with an adoption proceeding **or in an independent proceeding** for the termination of parental rights on grounds set out in (c)(3) of this section may be made by

(1) either parent if termination of the relationship is sought with respect to the other parent. . .

The catalyst for the legislation was a particular child custody case wherein a biological father's parental rights had been terminated on public policy grounds because the child had been conceived through his sexual abuse of his stepdaughter. On appeal, the Supreme Court affirmed the custody decision but overturned the termination because sexual abuse had not been claimed and because termination was not available in a custody case outside of an adoption or a child in need of aid (CINA) proceeding. Noting the problem, the Court in its decision encouraged the legislature to address the problem.

The legislative history of the measure clearly indicates that the intent was to provide a statutory mechanism for private individuals to accomplish the involuntary termination of parental rights outside of a criminal case, and without the government involvement required for an adoption or a CINA proceeding. Streamlining of the language during the 1987 passage of the bill resulted in the current situation, which is that the essential nugget for a private termination action—although tied to AS § 25.23.180(c)(3)—hinges on language in AS § 25.23.180(e). While the law is succinct, it has at times been subject to misinterpretation outside of the Alaska courts.

Catalyst for Legislation

Alaska's statutory provision originated from 1987 legislation designed to address a particular situation about which the Alaska Supreme Court had just issued a decision.¹ In that case, the lower court had granted custody to the mother and terminated the parental rights of the biological father (the woman's stepfather) on public policy grounds for conceiving the child as a result of a criminal relationship (begun when the woman herself was an eight year old child). The father appealed. The

¹ S.J. v. L.T. 727 P.2d 789 (1986).

Supreme Court, while affirming the award of custody to the mother, overturned the termination of the father's parental rights on points of law and remanded the case to the superior court for further proceedings.

The majority concluded that because no accusations of child sexual abuse had been brought, the evidence presented had failed to support the lower court's finding that the child had been conceived as a result of a criminal relationship. Further, Alaska law at that time allowed for the involuntary termination of parental rights only in the context of adoption or child in need of aid (CINA) proceedings. Since neither of those statutory mechanisms had been invoked, the Court ruled that the termination was improper.

The Justices were not unsympathetic to the woman's plight, however, and while discussing some troubling possibilities for using a "criminal relationship" as the basis for termination of parental rights, they made the following point:

We take this opportunity to urge the legislature to consider issues such as those raised in this case in order to provide courts with necessary guidance in resolving sensitive questions.

Justice Burke, disagreeing with the majority in regard to the termination, highlighted the dynamics of sexual relationships between children and adult authority figures. He argued that by its very nature, the relationship in the case could not have been consensual, and the court should "deny the existence of *any* parental rights where the offspring resulted from abuse by the stepfather of a child in his care for eight years."

In a separate opinion concurring with the majority, Chief Justice Rabinowitz concluded as follows:

I think it of critical importance to emphasize that on remand it remains open to [the mother and the child's guardian ad litem] to demonstrate to the superior court that no parental rights ever attached to [the biological father]. In this regard I am of the view that the theory advanced by Justice Burke in his dissent has considerable merit. I also think it important that the courts of Alaska neither recognize nor enforce parental rights in the circumstance where they have been obtained in an egregious manner.

Evolution of the Legislative Fix

The Supreme Court issued its decision in the case in November of 1986. Shortly thereafter, the first session of the Fifteenth Legislature (1987 – 1988) convened and took up consideration of the pre-filed Senate Bill 30, "An Act relating to termination of parental rights of perpetrators of certain sexual offenses." Myra Munson, then-commissioner of the Department of Health and Social Services (DHSS), urged speedy passage of the bill noting,

[This bill] was written to address one specific case in which there is wide spread agreement about the answer. When a child is conceived through sexual abuse, it is clear why a mother and the child would want the parental rights of the father terminated. . . [The bill] needs to be passed this session before a judgment is made in that case.²

As introduced, the bill would have added new sections to AS § 47.17, the laws addressing child protection. The proposed article included a Purpose section as well as a section on Who May File Petition—a list that began with the mother, personal

² Commissioner Munson refers to a prospective judgment in the superior court on the termination issue on remand from the Supreme Court. House Health, Education and Social Services Committee, May 17, 1987.

representative, or guardian of the child.³ Another section mandated that if, by clear and convincing evidence, the court found that a child had been conceived by an act constituting sexual abuse of a minor or incest and that termination was in the best interests of the child, the court would terminate the parental rights of the biological parent.

Before the bill had advanced beyond its first committee, DHSS recommended moving the language to the section of law relating to adoptions (AS § 25.23). In so doing, DHSS was responding to suggestions from Andy Harrington, the attorney with Alaska Legal Services Corporation who had represented the woman in the appeal before the Supreme Court.⁴ In communication with the DHSS, Mr. Harrington noted the efficiency of amending existing adoption statutes that already contained several provisions regarding termination of parental rights, rather than creating a new set of laws:

Inserting the . . . private cause of action into AS 25.23.180 will make it possible for a private individual to terminate parental rights based on the child sexual abuse/incest ground; it will enable a private individual to terminate another's parental rights if that private individual can make the same showings the State makes in terminating parental rights in child-in-need cases.⁵

Having dealt first hand with the issue, the attorney proposed that AS § 25.23.180(c) read as follows:

The relationship of parent [and] child may be terminated by a court order issued in connection with an adoption proceeding under this chapter, **an independent proceeding under this section**, or a proceeding under AS 47.10 [CINA] **on any of the following grounds**. . . .

Additionally, he recommended adding the phrase *non-adoptive termination of parental rights* in several strategic places.

The committee substitute did not incorporate the phrase *non-adoptive termination of parental rights* anywhere, but instead did the following:

- moved the provisions to the chapter on adoption;
- added the phrase *an independent proceeding under this section*, but placed it in AS § 25.23.180(e), a subsection that already identified those entitled to bring such actions, including “either parent”; and
- broadened the language of AS § 25.23.180(c) from “an adoption proceeding” to “a proceeding under this chapter.”

Aside from the addition of sexual assault to the conditions for termination, subsequent changes were largely stylistic and did not alter the essential provision. The bill was enacted as Chapter 50 SLA 1987, and it appears that the specific language outside of an adoption situation has not been before the Alaska Supreme Court since the originating case. The enacted language—still current—is succinct, but some have found it rather too subtle to be unerringly parsed.⁶

³ Senate Bill 30 as introduced included the following language: Sec. 47.17.180. PURPOSE. In order to protect the child conceived as a result of sexual abuse of a minor or of incest, the court may terminate the parental rights of the perpetrator to the child when the termination is in the best interests of the child.

⁴ Andy Harrington began working with Alaska Legal Services Corporation in 1982. He became that entity's Fairbanks supervisor in 1996 and served as the organization's executive director from 2002 until 2010.

⁵ Andy Harrington, Alaska Legal Services attorney, to Randall Burns, special assistant, DHSS, March 11, 1987. Under court rules, the showing (standard of evidence) needed for terminating parental rights in either adoption or CINA cases is clear and convincing evidence.

⁶ For example, according to the Rape, Abuse & Incest National Network (RAINN)—the nation's largest anti-sexual violence organization and the source typically cited as definitive on the issue—Alaska Statute 25.23.180(c)(3) “only applies where the child has first been identified as a ‘child in need of aid’”; <http://apps.rainn.org/policy-state-laws-db/index2.cfm?state=Alaska&group=1>.

Federal Legislation

The Rape Survivor Child Custody Act was signed into law on May 29, 2015, as Title IV of the Justice for Victims of Trafficking Act (Public Law 114-22). This title (Section 401-409, attached) directs the Department of Justice to increase certain grant funding to states with laws in place that allow the mother of any child conceived through rape to petition the court for termination of the parental rights of the biological father with regard to that child and that authorize the court to grant such termination upon clear and convincing evidence of rape. The increase in funding would be no more than ten percent of the average of the total amount provided to the state under two formula grant programs during the three most recent awards. The increase would be allocated such that 25 percent would be provided under the STOP Violence Against Women Formula Grant Program, and 75 percent would be provided under the Sexual Assault Services Program.⁷ The increase would be for a two-year period, and could be provided four times. The Act authorized \$5 million to be appropriated for each of fiscal years 2015 through 2019 to cover the incentive.

Eligibility for Federal Incentive—Adding Clarity to Alaska Law

Alaska law authorizes a mother to petition and the court to terminate the parental rights of a biological father if it finds that his child's conception resulted from an act of sexual assault or from sexual abuse of a minor and that termination is in the child's best interests. Although not explicit, no criminal conviction is required as a prerequisite to a finding of conception by rape or sexual assault. Although neither the law nor court rule specifies the burden of proof required in such actions, Alaska courts—like those in all states—are bound by a U.S. Supreme Court decision holding that in actions to terminate parental rights, due process requires that allegations are proven at least by clear and convincing evidence.⁸ It appears in this regard, that Alaska law would meet the requirements as envisioned in the federal legislation.

We note, however, the following statement among the findings (Section 403) of the new law:

(7) Currently only 10 States have statutes allowing rape survivors to petition for the termination of parental rights of the rapist based on clear and convincing evidence that the child was conceived through rape.

The source of this assessment is not cited, but may be the Rape, Abuse & Incest National Network (RAINN), the nation's largest anti-sexual abuse organization, and one of the pivotal supporters of the original bill in Congress. The organization appears to have misinterpreted Alaska's law as applying only in CINA cases.

From both the statutory language and the intent that is paramount throughout the legislative history, the Alaska courts would without doubt apply the law correctly; nevertheless, the language could be more transparent. Referencing independent proceedings within the language of AS § 25.23.180(c) would diminish the possibility of misinterpretation by the public or by other entities. Making explicit both that a criminal conviction is not a prerequisite to termination and that the proof required for a finding of conception by sexual assault or by sexual abuse of a minor is clear and convincing evidence would likewise increase clarity.

You may wish to consult with the attorneys at Legislative Legal Services on these issues. We hope this is helpful. If you have questions or need additional information, please let us know.

⁷The STOP Violence Against Women Formula Grant Program is part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg, et seq.); the Sexual Assault Services Program is section 41601 of the Violence Against Women Act of 1994 (42 U.S.C. 14043g).

⁸*Santosky v. Kramer*, 455 U.S. 745 (1982). Alaska court rules pertinent to adoption and CINA cases also both specify that termination of parental rights must be based on clear and convincing evidence.

do so, shall be fined under this title or imprisoned not more than 10 years, or both.

“(b) REQUESTS TO PROSECUTE VIOLATIONS BY STATE ATTORNEYS GENERAL.—

“(1) IN GENERAL.—The Attorney General shall grant a request by a State attorney general that a State or local attorney be cross designated to prosecute a violation of this section unless the Attorney General determines that granting the request would undermine the administration of justice.

Deadline.

“(2) REASON FOR DENIAL.—If the Attorney General denies a request under paragraph (1), the Attorney General shall submit to the State attorney general a detailed reason for the denial not later than 60 days after the date on which a request is received.”.

Rape Survivor
Child Custody
Act.

TITLE IV—RAPE SURVIVOR CHILD CUSTODY

42 USC 13701
note.

SEC. 401. SHORT TITLE.

This title may be cited as the “Rape Survivor Child Custody Act”.

42 USC 14043h.

SEC. 402. DEFINITIONS.

In this title:

(1) **COVERED FORMULA GRANT.—**The term “covered formula grant” means a grant under—

(A) part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg et seq.) (commonly referred to as the “STOP Violence Against Women Formula Grant Program”); or

(B) section 41601 of the Violence Against Women Act of 1994 (42 U.S.C. 14043g) (commonly referred to as the “Sexual Assault Services Program”).

(2) **TERMINATION.—**

(A) **IN GENERAL.—**The term “termination” means, when used with respect to parental rights, a complete and final termination of the parent’s right to custody of, guardianship of, visitation with, access to, and inheritance from a child.

(B) **RULE OF CONSTRUCTION.—**Nothing in this paragraph shall be construed to require a State, in order to receive an increase in the amount provided to the State under the covered formula grants under this title, to have in place a law that terminates any obligation of a person who fathered a child through rape to support the child.

42 USC
14043h-1.

SEC. 403. FINDINGS.

Congress finds the following:

(1) Men who father children through rape should be prohibited from visiting or having custody of those children.

(2) Thousands of rape-related pregnancies occur annually in the United States.

(3) A substantial number of women choose to raise their child conceived through rape and, as a result, may face custody battles with their rapists.

(4) Rape is one of the most under-prosecuted serious crimes, with estimates of criminal conviction occurring in less than 5 percent of rapes.

(5) The clear and convincing evidence standard is the most common standard for termination of parental rights among the 50 States, territories, and the District of Columbia.

(6) The Supreme Court established that the clear and convincing evidence standard satisfies due process for allegations to terminate or restrict parental rights in *Santosky v. Kramer* (455 U.S. 745 (1982)).

(7) Currently only 10 States have statutes allowing rape survivors to petition for the termination of parental rights of the rapist based on clear and convincing evidence that the child was conceived through rape.

(8) A rapist pursuing parental or custody rights causes the survivor to have continued interaction with the rapist, which can have traumatic psychological effects on the survivor, and can make it more difficult for her to recover.

(9) These traumatic effects on the mother can severely negatively impact her ability to raise a healthy child.

(10) Rapists may use the threat of pursuing custody or parental rights to coerce survivors into not prosecuting rape, or otherwise harass, intimidate, or manipulate them.

SEC. 404. INCREASED FUNDING FOR FORMULA GRANTS AUTHORIZED.

42 USC
14043h-2.

The Attorney General shall increase the amount provided to a State under the covered formula grants in accordance with this title if the State has in place a law that allows the mother of any child that was conceived through rape to seek 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.

SEC. 405. APPLICATION.

42 USC
14043h-3.

A State seeking an increase in the amount provided to the State under the covered formula grants shall include in the application of the State for each covered formula grant such information as the Attorney General may reasonably require, including information about the law described in section 404.

SEC. 406. GRANT INCREASE.

42 USC
14043h-4.

The amount of the increase provided to a State under the covered formula grants under this title shall be equal to not more than 10 percent of the average of the total amount of funding provided to the State under the covered formula grants under the 3 most recent awards to the State.

SEC. 407. PERIOD OF INCREASE.

42 USC
14043h-5.

(a) **IN GENERAL.**—The Attorney General shall provide an increase in the amount provided to a State under the covered formula grants under this title for a 2-year period.

(b) **LIMIT.**—The Attorney General may not provide an increase in the amount provided to a State under the covered formula grants under this title more than 4 times.

42 USC
14043h-6.**SEC. 408. ALLOCATION OF INCREASED FORMULA GRANT FUNDS.**

The Attorney General shall allocate an increase in the amount provided to a State under the covered formula grants under this title such that—

- (1) 25 percent the amount of the increase is provided under the program described in section 402(1)(A); and
- (2) 75 percent the amount of the increase is provided under the program described in section 402(1)(B).

42 USC
14043h-7.**SEC. 409. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated to carry out this title \$5,000,000 for each of fiscal years 2015 through 2019.

Military Sex
Offender
Reporting Act
of 2015.

TITLE V—MILITARY SEX OFFENDER REPORTING

42 USC 16901
note.**SEC. 501. SHORT TITLE.**

This title may be cited as the “Military Sex Offender Reporting Act of 2015”.

SEC. 502. REGISTRATION OF SEX OFFENDERS RELEASED FROM MILITARY CORRECTIONS FACILITIES OR UPON CONVICTION.

(a) **IN GENERAL.**—The Sex Offender Registration and Notification Act is amended by inserting after section 128 (42 U.S.C. 16928) the following:

42 USC 16928a.

“SEC. 128A. REGISTRATION OF SEX OFFENDERS RELEASED FROM MILITARY CORRECTIONS FACILITIES OR UPON CONVICTION.

“The Secretary of Defense shall provide to the Attorney General the information described in section 114 to be included in the National Sex Offender Registry and the Dru Sjodin National Sex Offender Public Website regarding persons—

“(1)(A) released from military corrections facilities; or

“(B) convicted if the sentences adjudged by courts-martial under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), do not include confinement; and

“(2) required to register under this title.”

(b) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of contents of the Adam Walsh Child Protection and Safety Act is amended by inserting after the item relating to section 128 the following:

“Sec. 128A. Registration of sex offenders released from military corrections facilities or upon conviction.”

TITLE VI—STOPPING EXPLOITATION THROUGH TRAFFICKING

SEC. 601. SAFE HARBOR INCENTIVES.

Part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.) is amended—

42 USC 3796dd.

- (1) in section 1701(c), by striking “where feasible” and all that follows, and inserting the following: “where feasible, to an application—



MEMORANDUM

May 13, 2013

Subject: State Statutes Regarding Parental or Visitation Rights of Rapists
From: Cassandra Foley
 Law Librarian
 Knowledge Services Group
 202.707.4179

This memorandum was prepared to enable distribution to more than one congressional office.

This memorandum responds to your request for state laws regarding parental or visitation rights of rapists. We found this information by searching the LexisNexis State Statutes database using variations and combinations of the terms *parent, child, visitation, custody, parental rights, sex offense, rape, felony, conception, born, and conceive*. Please note that LexisNexis may not include very recent legislative enactments yet to be codified. While we have attempted to make the provided information fully inclusive, there is the possibility that some relevant statutes did not come up in our search.

Please contact CRS if you have any further questions.

Table I. State Statutes Regarding Parental or Visitation Rights of Rapists

State	Statutory Text
Alabama	No statute found.
Alaska	No statute found.
Arizona	No statute found.
Arkansas	<p>Ark. Code Ann. § 9-13-101 (2012). Award of custody.</p> <p>(d)(1) If a party to an action concerning custody of or a right to visitation with a child is a sex offender who is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., the circuit court may not award custody or unsupervised visitation of the child to the sex offender unless the circuit court makes a specific finding that the sex offender poses no danger to the child.</p> <p>(2) There is a rebuttable presumption that it is not in the best interest of the child to be placed in the care or custody of a sex offender or to have unsupervised visitation with a sex offender.</p> <p>(3) There is a rebuttable presumption that it is not in the best interest of the child to be placed in the home of a sex offender or to have unsupervised visitation in a home in which a sex offender resides.</p>



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Alaska

Alaska Parental Rights

Does the state allow for termination of rapists' parental rights over any child born from that rape?	Yes
Can all, some, or none of these parental rights be terminated?	All
What are the parental rights termination details?	N/A
Statutory citation(s):	See Ak. Stat. 25.23.180(c)(3).
Are there exceptions to the laws which allow for termination of rapists' parental rights?	Yes
What are the exceptions details?	Only applies where the child has first been identified as a "child in need of aid"
What is the type of proof required to terminate rapists' parental rights?	None Stipulated
What are the type of proof details?	Pursuant to Santosky v Kramer 45 USC 745, the default burden should be clear and convincing.
Type of proof statutory citation(s):	Santosky v Kramer 45 USC 745, the default burden should be clear and convincing.
Does the state allow for restrictions on rapists' adoptive rights?	Yes
What are the adoptive right details?	N/A
Adoptive rights statutory citation(s):	See Al. Stat. 25.23.180(d).
Does the state require that rapists pay child support even after parental rights have been terminated?	No

Last Updated: 2014-10-15 14:48:57.0

Online Sexual Assault Hotline: 1.800.656.HOPE Free, Confidential. 24/7

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Fails to mention AS 25.23.180 (c)(3) and (e)

Alaska

Circumstances That Are Grounds for Termination of Parental Rights

Alaska Stat. §§ 47.10.011; 47.10.080; 47.10.086; 47.10.088

The parent's parental rights may be terminated if the court finds by clear and convincing evidence that:

- The child has been subjected to conduct or conditions described below.
- The parent has not remedied the conduct or conditions in the home that place the child at substantial risk of harm.
- The department has complied with requirements concerning reasonable efforts.

Any of the following may be grounds for termination:

- The parent has abandoned the child.
- The parent is unable to discharge his or her parental duties due to:
 - Emotional illness, mental illness, or mental deficiency
 - Use of alcohol or controlled substances
 - A conviction and incarceration for a felony, and the parent has not arranged for the child's care
- The parent has subjected the child to circumstances that pose a substantial risk of harm, including, but not limited to, abandonment, torture, chronic mental injury, chronic physical harm, or sexual abuse.
- The parent's conduct or neglect has resulted in serious physical or mental injury to the child.
- The child has been in foster care for 15 of the most recent 22 months, and reasonable efforts to rehabilitate the parent have failed.
- The parent has been convicted of:
 - Homicide of a parent of the child or a child
 - Aiding, abetting, attempting, or soliciting to commit a homicide of a parent of the child or a child
 - A felony assault that resulted in serious bodily injury to a child
- The child has been sexually abused as a result of the parent's conduct or failure to protect the child.
- The parent has willfully failed to provide the child with needed medical treatment.
- The child has committed an illegal act as a result of pressure, guidance, or approval from the parent.
- Parental rights to another child of the parent have been involuntarily terminated and conditions that led to the termination have not been corrected.

Circumstances That Are Exceptions to Termination of Parental Rights

Alaska Stat. § 47.10.088

The Department of Health and Social Services shall file a petition for termination of parental rights when the child has been in foster care for at least 15 of the most recent 22 months unless:

- The department has documented compelling reasons why termination of parental rights would not be in the best interests of the child. This may include the child being cared for by a relative.
- The department is required to make reasonable efforts according to the case plan and has not provided to the parent the family support services that the department has determined are necessary for the safe return of the child to the home.

Circumstances Allowing Reinstatement of Parental Rights

Alaska Stat. § 47.10.089

After a termination order is entered and before the entry of an adoption or legal guardianship decree, a person who voluntarily relinquished parental rights to a child under this section may request a review hearing, upon a showing of good cause, to vacate the termination order and reinstate parental rights relating to that child. A court shall vacate a termination order if the person shows, by clear and convincing evidence, that reinstatement of parental rights is in the best interests of the child and that the person is rehabilitated and capable of providing the care and guidance that will serve the moral, emotional, mental, and physical welfare of the child.

■ LISA LING

How I stopped my state from giving parental rights to rapists

By **Analyn Megison**, Special to CNN

🕒 Updated 1:22 PM ET, Mon November 21, 2016



After a sexual assault, Analyn Megison found herself pregnant -- and trapped in a terrifying custody battle.

Editor's Note: *Analyn Megison is a mother and advocate for rape survivors. The opinions expressed here are her own. To learn more about her story and parental rights laws for rapists throughout the United States, catch up on "This is Life with Lisa Ling."*

(CNN) — The first thing you need to know is that I love my child with all my heart.

It's important for me to tell you that because my daughter was conceived through a sexual assault, and after her birth I was told that I couldn't have truly been raped if I chose to have the child caused by the attack.

I must have "wanted it."

So let me be clear: I did not want to be dragged through the entrance of my home into my bedroom by someone I met through mutual friends after a night out in Baton Rouge, Louisiana.

I did not, in the aftermath of being raped, want to smell my own blood in the carpet or experience my 29-year-old body in excruciating pain. I did not want to think of myself as a victim.

I also did not want to feel the horror and shock that came years later when my rapist tried to claim custody of my child -- the child I chose to carry to term as my pregnancy gave me hope that I was not completely broken and destroyed.

At the time, there wasn't any law in my new home state of Florida to stop my rapist from having parental rights to the child he fathered through sexual assault. Throughout my custody battle, I was repeatedly told that a rapist father is as good as any other father under the state's law.

As I fought back against my attacker once again, I knew something else I didn't want: for anyone else to go through this nightmare.

My decision to give birth

According to the [National Conference of State Legislatures](#), there are anywhere between 17,000 to 32,000 pregnancies each year in the United States caused by rape. This is a conservative number because a vast majority of rapes are unreported.

It isn't known exactly how many women choose to carry those pregnancies to term and subsequently raise those children, but it is obvious that it's a very personal decision.



When I found out that I was pregnant as a result of the assault, I searched and struggled until I found a renewed sense of my own strength. I chose to carry my child to term because I knew I had a very unique person growing inside me, one who proved to me that hope can live even in the darkest of times. My faith carried me through this whole experience.

After my daughter's birth, years passed filled with trips to the beach, playground adventures, bedtime stories and hugs and kisses.

And then came the day I found myself being served with court papers on behalf of my rapist. I was terrified at the danger this posed for my precious little girl, who had no idea what I was about to go through to protect her. As a single mother who received no child support, and who had no war chest of finances to support a court battle, I was trapped. Without a

law to prevent this, all I could do was present my case, advocate for my beloved daughter, and pray.

Thankfully, the judge decided that my rapist wouldn't have contact with my daughter without first having a full hearing on the evidence on how he raped me and how she came to be. My attacker and his attorneys didn't want to go there, and eventually he abandoned his claim to her. After more than two years of terror, I won.

How I changed Florida's law

I wanted my state to protect women who'd been raped from the fear that their attacker could gain parental access to any children conceived during the attack.

As a law school graduate, I knew my first step was to research what other policies or laws were already out there, and I reached out to my old law professor for help. We came up with a plan for the bill language, knowing that "clear and convincing evidence" would be critical.



Analyn Megison worked to create a law in Florida that would block parental rights for sexual assailants.



Related Video: A rape survivor's custody battle for her child 01:34

everything. I was grateful, and felt comforted that now other women who are rape survivor mothers had equal footing in Florida.

What I want the world to know now

At times I wondered if I was good enough to advocate for change as a rape survivor; there is so much stigma for someone who speaks up about sexual assault.

National Sexual Assault Hotline

If you or a loved one is a survivor of assault, please call

National Sexual Assault Hotline: 1-800-656-HOPE

That's because parental rights cases are civil matters, not criminal. So if you're trying to terminate the rights of a parent based on, say, child neglect, the most you'd need to provide in court is "clear and convincing evidence" of negligence.

Women who've been raped, however, often face a different challenge. If the law I was working on demanded a rape conviction before parental rights could be terminated, that would hold the woman to providing a greater level of evidence -- not to mention one that's only allowed in criminal court -- than is required for any other parental rights case.

We don't require criminal convictions for habitual drug use or child abuse, so why is it reasonable to demand one from a woman who claims she was raped and conceived her child through rape? Especially when we know that the widespread myth that women often "falsely cry" rape is without support; [research indicates](#) the "false report" rate for rape is equal to or less than the false report rate of other violent crimes. We shouldn't let an unproven belief cause us to hold raped women to a higher standard for evidence than other parents seeking termination of parental rights.

With that in mind, I wrote a draft of my bill and found a legislator to sponsor it in the senate and co-sponsor it in the house. I shared my story with Republicans, Democrats and basically anyone who cared about coming together to solve this. Talking about my personal reasons for wanting this law wasn't easy, and there were questions that made the experience painful. Were there any witnesses to my rape? If it was really rape, why would the rapist want to claim the child? How could I really have been raped if I love this child?

But it was worth it. Amazingly, my bill remained virtually unchanged from start to finish and passed unanimously with bipartisan support, even at a time when our country's lawmakers have been so bitterly divided over practically

But through this process, I learned that it truly takes just one individual to stand up when injustice seems ordinary. Becoming a mother helped me understand that. Changing laws is a lot like changing diapers: messy, yet so easy to embrace for the little ones you love so much.

By the time my children are grown, I hope the world has changed for the better and no one will stigmatize one of them for being conceived when a rapist attacked me. No mother, no rape survivor, should be put through this ordeal. Our beloved children should never have to be put through this

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terror. The fact that it is still a threat to us in America is really unconscionable and has no place in our free society.

I want to bring more people together to find common ground for a solution. This is only a starting place in ending violence against women.



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Rape and child custody

A question of proof

When alleged rapists sue for parental rights

Jul 19th 2014 | WASHINGTON, DC | From the print edition

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.



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.

From the print edition: United States



(/)

Posted May 1, 2016 12:02 am - Updated May 3, 2016 07:01 pm

By PAULA ANN SOLIS (/paula-ann-solis-0)

JUNEAU EMPIRE

Twice the victim of a rapist

Mother of a 6-year-old boy conceived through statutory rape wants the father's parental rights terminated before he wins full custody



Angelica Curtis sits with her son, Jonathan Torres, at their rented home in Haines in early April. Angelica's parents are trying to regain legal custody of Jonathan, conceived by statutory rape when Angelica was 13 in Petersburg. Currently, the father's parents in Petersburg have legal parental rights even though Jonathan has lived with the Curtis' since he was born.

It's been six years since Angelica Curtis gave birth to a child she conceived through statutory rape, and she still remembers the name she wanted to give her baby boy.

"I had a different name picked out for him," she said. "Jeremy."

But nothing about her baby's birth was normal or planned out. Angelica was a 13-year-old middle school student living in Petersburg with her mom and dad when she found out she was pregnant. The child's father, Jonathan Torres Chim, was a 19-year-old man whom Angelica thought she was in love with. But really, she now says in hindsight, he introduced her to a world of drugs and emotional abuse, although that's something he contests to this day.

Before their son was born, Chim at 19 was sentenced to serve three years in prison for attempted sexual abuse of a minor for his relationship with Angelica, which was statutory rape. During that same time, Angelica said she realized she was trapped in a type of prison, too — bound to the man she now considers her tormentor through a child she felt forced to name after him.

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(<http://juneauempire.com/local/news/2017-12-17/juneau-job-homecoming-sorts-salvation-army-s-new-local-leaders>)

"Me being 14 when I gave birth, thinking that I needed his help, I named him Jonathan," Angelica, now 20, said of her baby during an interview at her parents' home in Haines where she lives.

Her son's first and last name, Jonathan Torres, is a constant reminder of her rapist. Angelica believes that Chim, knowing he would be sent to prison for his relationship with a juvenile, intentionally impregnated her, then told her she would be left without financial help if she didn't give the boy his family's name.

From the beginning, Angelica said decisions that were seemingly hers were really controlled by others.

"I just wasn't psychologically ready to be a parent," Angelica said, adding that at that time, she was under the influence of a wide spectrum of drugs and the influence of Chim, whom she kept in contact with while he was imprisoned.

"When he was in jail he would call me every day and make me feel like I had to talk to him on the phone for hours because he would say that it was my fault he was in there and it wasn't fair that I got to be out and free," she said.

Today, even though Angelica is off drugs and is trying to regain a sense of well-being, her torment continues. This time, she could lose her son. For three years now, she's been in a legal battle, fighting her rapist for custody of their son.

Little Jonathan

The custody battle over Little Jonathan — as his family calls him to distinguish him from his father, who goes by Jon — started one year after Jonathan was born. His mother was caught rifling cars in Petersburg with a friend while the two were ditching class to get high. She was sent to the McLaughlin Youth Center in Anchorage for 16 months and, with Chim still behind bars at Lemon Creek Correctional Center in Juneau (he's now out of prison), Angelica's parents Miles and Tonya applied for legal guardianship. In order to do that, they had to notify the biological father, giving way to the years-long custody battle.

"I don't think it's fair that if you commit a crime you should be able to get something out of it," Miles said, sitting beside Tonya in their living room while Jonathan played by himself off to the side. "I don't think that (Chim) should have that."

Miles and Tonya consider themselves "psychological" parents to Jonathan, although Angelica is now present and out of the detention center. During long periods of absence by both parents, Jonathan has lived with his maternal grandparents, first in Petersburg, and now in Haines.

Chim has seen his son throughout the years, too. He first saw his son through a glass window when the Curtis family took the baby to LCCC. Miles said he took the boy to see his father because his family is forgiving and wanted to do what they thought might be best at the time. From Miles' perspective, Chim looked like a caring father back then, proud of his new son, but later Chim would lose interest in his son and never acknowledged the severity of the crime he committed against Angelica. Miles said Chim and Chim's family tell Angelica often — still to this day — that nothing criminal took place because the sex was consensual between Angelica and Chim. Again, Angelica was a 13-year-old girl at the time, and not capable of consenting to a sexual relationship with someone so many years her elder, which is acknowledged in Alaska law and something Miles is of course emphatic about. Alaska statutes make it illegal for anyone 17 years of age or older to engage in sexual activity with someone 13, 14, or 15 years of age and at least four years younger than the defendant.

It's Miles and Tonya who have actively fought to make sure Jonathan could stay near his mother while she dealt with behavioral and mental health issues, which stem from her adolescence.

"I always check with her to make sure what I'm doing is something she would want to do if she could do it, but she's just not really capable of doing it at this time, so I've taken on that role," Miles said, explaining his exhaustive role in the court proceedings.

It was Miles who first investigated legal options for stripping Chim of his rights as a father because of the statutory rape Chim committed. Miles found an Alaska statute he believed was reserved for adoption cases. He asked Angelica's lawyers (there were changes over the years based on court appointments) to look into the law, but each failed to see how it applied in the case at hand. The law did, after all, reside within an adoption clause.

Without a lawyer to fight the case of parental rights termination, Angelica and her parents were left to battle Chim and his parents in the courts, going back and forth, filing motions for temporary guardianship as the larger battle continues.

The defense

In an affidavit Chim's attorney Fred Triem, of Petersburg, filed in 2014, Chim reported having a good father-son relationship with Jonathan. When he would visit Chim in Petersburg, Chim said the boy anxiously awaited for him to return home from work and

that he was also teaching his son to speak Spanish. Chim described his son as “happy” when the two were together.

Just as Miles advocates for his daughter and grandson, Chim’s father Victor Torres is seemingly doing the same for his son. Torres is listed as the potential guardian, should Chim win the custody battle, although Miles said the real driving force is Chim and the Torres grandparents aren’t as invested as the Curtis grandparents.

Chim only answered one of many phone calls the Empire made over the course of several months to discuss the case, and referred questions to his lawyer, Triem. The Empire sent a request to Triem that he contact Chim and the Torres family for an interview, but that did not happen. Triem did say Chim is as invested in Jonathan’s care and well-being as the Curtis family. Triem also called the idea of taking a child from his father — even one convicted of statutory rape — as “draconian.”

“(Termination of parental rights) would just be draconian in its penalty on young people who engage in intercourse,” Triem said in a phone interview in April. “It was dumb luck the two were (caught together) on the day after the father (Chim) had his 19th birthday, which made him eligible for a draconian criminal procedure.”

Sitting on a recliner with Jonathan fidgeting in her lap, Angelica did not use the word “luck” in any sense to describe the events that led to her pregnancy.

“Yeah, at the time (it seemed like a relationship), but since then ... I’ve received a year of treatment where I got counseling every day, and they helped me see it differently,” she said. “When I was in treatment, I was 17, 18 years old, which was about the same age as Jon was at the time (the relationship started), and I wouldn’t think it was right to have a child with a 13-, 14-year-old when I was 18 or 19. And I don’t see why he didn’t see it that way.”

Moving from side to side in sync with her child, and often escaping eye contact, Angelica pulled at the ends of her sweater. She said that her situation is hard to talk about generally, it’s hard to talk about to a reporter, and it’s hard to talk about in a courtroom. Her parents, Miles and Tonya, often speak up for her, fighting for her and her son while she continues to fight her own battles with drug addiction and psychological trauma.

“I see that he was the adult in that situation,” Angelica said, recounting feedback she has received in counseling, which she said helps her cope. “And he was the one that had to go to jail, and he was the one that should have been responsible to make the better decision. In treatment, they told me that I shouldn’t ... feel responsible for something that he should have been responsible for,” she said.

She was interrupted by Jon who suddenly joined the conversation at the sound of a familiar word.

"Who's going to jail again?" he asked. "My dad?"

Murky law

Angelica's story is a familiar one across the country where upward of an estimated 17,000 women become pregnant through rape each year, according to the Rape, Abuse & Incest National Network. To protect those women, 33 states provide rape victims the ability to reduce or terminate the rights of their rapist. In Alaska, the law is less clear.

To help his daughter, Miles pleaded with several state lawmakers to do something about a piece of legislation he thought was missing on Alaska's books. Then, when one senator reached back, he found out the legislation wasn't missing; it was just misplaced.

From inside her downtown office in the Capitol, Sen. Berta Gardner, D-Anchorage, said it's "egregious" that women who conceive children through rape then have to fight for custody of their child.

"When we first heard the (Curtis family) story we thought, 'Well that's pretty egregious that a convicted rapist could potentially get custody of the child,'" Gardner said in an interview. "While it's always a little bit sticky to try to have legislation based on a single case, we said, 'Well, let's look into this and see what the status is. How could this really happen?'"

Gardner attempted to clarify the state's legislation after Miles reached out to her a year ago (and continually since) and told her his family's story.

This session, Gardner sponsored a bill that would spell out a statute created after a case in 1986 in which a child conceived through rape and given up for adoption was at risk of being adopted by the convicted rapist/father. The statute was eventually updated to allow rape victims in all proceedings to terminate a rapist's parental rights, but Gardner's research team found that some courts still require a child be in danger or be the subject of an adoption before applying the termination rule.

Gardner said in speaking with family law attorneys in advance of supporting the legislation, she discovered many practicing law were not aware the statute even existed. There also aren't statistics in Alaska to prove how often people miss the opportunity to use the statute

because family law proceedings can be sealed, or rape victims are unwilling to drag a case out in court or they just don't know they have the right.

"It's not well-known that we have that (law)," Gardner said. "We're not creating new policy, we are simply clarifying it by putting it into the appropriate statute title."

Gardner said she wanted her bill, Senate Bill 162, to roll into another bill, SB 91 — a criminal justice reform bill — but recognizes that probably won't happen. SB 162 has yet to receive a hearing, but Gardner said that doesn't mean she is giving up on it.

"We'll keep lugging away because we think it's a really important issue," Gardner said, again emphasizing that it's a matter of clarifying an existing right, not creating a new one. "When I was in town for the democratic caucus, a woman told me, 'Thank you for introducing SB 162. This is my daughter, she is a child of rape and I want to use your statute.' And I told her, 'You already can.'"

Lasting consequences

In February, Juneau magistrate James Curtain recommended Chim's father, Victor Torres, gain sole legal and primary custody of Jonathan, according to court documents. The recommendation only becomes an order once Superior Court Judge Louis Menendez approves of it (that's a hearing that's still a ways off since the Curtis family is contesting it.)

Under the current recommendation, if Chim wanted to live alone with Jonathan, he would only need Torres' permission. Angelica and her parents would have limited visitation rights based on the Torres' wishes.

The case seems to never end, Miles said. He and his family want to move forward with their lives, but the legal case keeps them at a standstill.

He said if their opposing motion is ignored and they must give Jonathan to his paternal grandparents, they plan to move to Petersburg to be close to him.

Angelica worries it will be traumatic for her son, whom she says does not know the Torres family like he knows her parents. Miles said the boys cries and becomes upset at the idea of having to stay with his father's side of the family, contrary to what Chim has reported to the court.

For Angelica, the longer the custody battle drags on, the less capable she feels of becoming a better mother. She said she'd like to not rely so heavily on her parents for support in her child's upbringing. She also has a passion for drawing that she would like to pursue, which she incorporates into playtime with her son.

"Mama sometimes helps me with stuff, and I help her," Jonathan said, sitting in his mother's lap while she talked about different art styles she was trying to learn. "She also (has) drawings and some kinds of stuff."

Focusing on art or mothering skills is difficult, Angelica said, when her past keeps creeping up to the forefront of her mind, and in the courtroom where she is literally judged time and again.

She believes her motherhood experience is too tainted to ever consider extending her family.

"Because I was so young it was really stressful and my parents kind of took over being the primary caretakers," she said. "And I don't feel like I'll ever have any more kids."

She wiped away tears and walked out of the room.

• Contact reporter Paula Ann Solis at 523-2272 or paula.solis@juneauempire.com (<mailto:paula.solis@juneauempire.com>).

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ALASKA HOUSE VOTES TO LOWER PERMANENT FUND DIVIDEND

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TROOPERS ARREST TWO ON FELONY PAROLE WARRANTS

Jody Simpson

From: Miles Curtis <mscottcurtis@outlook.com>
Sent: Tuesday, January 23, 2018 5:42 PM
To: Sen. David Wilson
Subject: SB 134 Child conceived in Rape

Dear Senator Wilson, I have been working with the legislature on helping to create a law that allows rape victims to terminate the parental rights of the abuser if the mother chooses to raise her child. Currently Alaska provides no protection to these women. This is one of the few crimes that allow a criminal to benefit from their crime at the victims expense. SB 134 helps to clarify the existing law that has been rejected by the court, as in my daughters case. 31 states had no laws when her abuser applied for custody 5 years ago. Now only 6 states remain, but strangely Alaska is actually listed as a state that has in place a law to terminate a rapists parental rights and has received Federal funding under the RSCCA. Washington State passed a law in 2017 that has all of the necessary elements to be successful in a court room and even has self help forms and instructions to assist the victim, this is a far cry from our experience thus far in Alaska. If your staff could review this it would prove to be a great asset to victims in this situation. Please contact me if you have questions.

Miles Curtis, (907)518-4405 Petersburg