

## **LIST OF OTHER STATES' STATUTES THAT DO NOT REQUIRE A CONVICTION PRIOR TO TERMINATING PARENTAL RIGHTS WHEN A CHILD IS CONCEIVED AS A RESULT OF RAPE**

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CLINIC—LAST UPDATED BY THE MARYLAND COALITION AGAINST SEXUAL ASSAULT JULY  
2017 (NEW STATES: MISSISSIPPI, MONTANA, WASHINGTON)**

In the state of Maryland there is currently no legal avenue for victims who bear a child as a result of a rape or sexual assault to terminate the parental rights of their attacker. This year through the Rape Survivor Family Protection Act (HB428/SB574), Maryland has an opportunity to join the growing group of 24 states that allow victims to terminate the parental rights of their assailant if a court finds by clear and convincing evidence that the assault or rape occurred and resulted in the conception of the child. For more information about the Rape Survivor Family Protection Act, visit <http://www.mcasa.org/rape-survivor-family-protection-act/>.

### **TERMINATION OF PARENTAL RIGHTS: DOES NOT REQUIRE CONVICTION:**

#### **Alaska - Alaska Stat. §25.23.180 (West 2013)**

(c) The **relationship of parent and child may be terminated** by a court order issued in connection with a proceeding under this chapter or a proceeding under AS 47.10 on the grounds

(3) that the **parent committed an act constituting sexual assault** or sexual abuse of a minor under the laws of this state or a comparable offense under the laws of the state where the act occurred that resulted in conception of the child and that termination of the parental rights of the biological parent is in the best interests of the child.

#### **Colorado - Colo. Rev. Stat. Ann. § 19-5-105.7 (West 2014)**

(1) The general assembly hereby declares that the purpose of this statute is to protect a person in a case where it is determined that he or she is a victim of sexual assault but in which no conviction occurred and to protect a child conceived as a result of that sexual assault by creating a process to seek termination of the parental rights of the perpetrator of the sexual assault and by issuing protective orders preventing future contact between the parties. The general assembly further declares that this section creates civil remedies and is not created to punish the perpetrator but rather to protect the interests of the petitioner and the child. The general assembly creates this section to address the procedures in cases where there are allegations of sexual assault but in which a conviction did not occur.

(3) The person who alleges that he or she is a victim of sexual assault and who alleges that a child was conceived as a result of a sexual assault in which a conviction did not occur may file a petition in the juvenile court to prevent future contact with the parent who allegedly committed the sexual assault and to terminate the parent-child legal relationship of the parent who allegedly committed the sexual assault.

(4) The verified petition filed under this section must allege that:

- (a) The respondent committed an act of sexual assault against the petitioner;
- (b) The respondent has not been convicted for the act of sexual assault;

- (c) A child was conceived as a result of the act of sexual assault as described under paragraph (a) of this subsection (4); and
  - (d) Termination of the parent-child legal relationship of the respondent with the child is in the best interests of the child.
- (11)(a) The court shall terminate the parent-child legal relationship of the respondent if the court finds by clear and convincing evidence that:
- (I) A sexual assault against the petitioner occurred;
  - (II) The sexual assault was perpetrated by the respondent;
  - (III) A child was conceived as a result of that act of sexual assault as evidenced by the respondent admitting parentage or genetic testing establishing the paternity;
  - (IV) Termination of the parent-child legal relationship is in the best interests of the child. The court shall not presume that having only one remaining parent is contrary to the child's best interests.

### **Connecticut - Conn. Gen. Stat. Ann. § 45a-717 (West 2016)**

- (g) At the adjourned hearing or at the initial hearing where no investigation and report has been requested, the court may approve a petition **terminating the parental rights** and may appoint a guardian of the person of the child, or, if the petitioner requests, the court may appoint a statutory parent, if it finds, upon clear and convincing evidence, that (1) the **termination** is in the best interest of the child, and (2)...
- (G) except as provided in subsection (h) of this section, the parent committed an act that constitutes sexual assault as described in [section 53a-70](#), [53a-70a](#), [53a-70c](#), [53a-71](#), [53a-72a](#), [53a-72b](#) or [53a-73a](#) or compelling a spouse or cohabitor to engage in sexual intercourse by the use of force or by the threat of the use of force as described in [section 53a-70b](#), if such act resulted in the conception of the child; or (H) the parent was finally adjudged guilty of sexual assault under [section 53a-70](#), [53a-70a](#), [53a-70c](#), [53a-71](#), [53a-72a](#), [53a-72b](#) or [53a-73a](#) or of compelling a spouse or cohabitor to engage in sexual intercourse by the use of force or by the threat of the use of force under [section 53a-70b](#), if such act resulted in the conception of the child.
- (h) If the petition alleges an act described in subparagraph (G) of subdivision (2) of subsection (g) of this section that resulted in the conception of the child as a basis for **termination of parental rights** and the court determines that the respondent parent was finally adjudged not guilty of such act of sexual assault under [section 53a-70](#), [53a-70a](#), [53a-70c](#), [53a-71](#), [53a-72a](#), [53a-72b](#) or [53a-73](#) or of compelling a spouse or cohabitor to engage in sexual intercourse by the use of force or by the threat of the use of force under [section 53a-70b](#), the court shall transfer the case to the Superior Court and the clerk of the Probate Court shall transmit to the clerk of the Superior Court to which the case was transferred, the original files and papers in the case. The Superior Court, upon hearing after notice as provided in this section and [section 45a-716](#), may grant the petition as provided in this section.

### **Florida - Fla. Stat. Ann. § 39.806 (West 2016)**

- (1) Grounds for the termination of parental rights may be established under any of the following circumstances:
- (m) **The court determines by clear and convincing evidence that the child was conceived as a result of an act of sexual battery made unlawful pursuant to s. 794.011, or pursuant to a similar law of another state, territory, possession, or Native American tribe where the offense occurred.** It is presumed that termination of parental rights is in the best interest of the child if the child was conceived as a result of the unlawful sexual battery. A petition for termination of parental rights under this paragraph may be filed at any time. The court must accept a guilty plea or conviction of unlawful sexual battery pursuant to s. 794.011 as conclusive proof that the child was conceived by a violation of criminal law as set forth in this subsection.

**Georgia – O.C.G.A. § 15-11-310 (2016)**

(a) In considering the termination of parental rights, the court shall first determine whether one of the following statutory grounds for termination of parental rights has been met:

(1) The parent has given written consent to termination which has been acknowledged by the court or has voluntarily surrendered his or her child for adoption;

**(2) The parent has subjected his or her child to aggravated circumstances;**

(5) "Aggravated circumstances" means the parent has:

**(G) Caused his child to be conceived as a result of having nonconsensual sexual intercourse with the mother of his child or when the mother is less than ten years of age (O.C.G.A. 15-11-2(5)(G)).**

**Hawaii – Haw. Rev. Stat. Ann. § 571-61 (West 2016)**

(b) Involuntary termination.

(5) The family courts may terminate the parental rights in respect to any child of any natural parent upon a finding by clear and convincing evidence that the natural parent committed sexual assault of the other natural parent, or an equivalent offense under the laws of another state, territory, possession, or Native American tribe where the offense occurred, and the child was conceived as a result of the sexual assault perpetrated by the parent whose rights are sought to be terminated; provided that:

(A) The court shall accept, as conclusive proof of the sexual assault, a guilty plea or conviction of the child's natural parent for the sexual assault, or an equivalent offense under the laws of another state, territory, possession, or Native American tribe where the offense occurred, of the other natural parent;

(B) Termination shall mean, when used with respect to parental rights in this paragraph, a complete and final termination of the parent's right to custody of, guardianship of, visitation with, access to, and inheritance from a child;

(C) The termination of parental rights shall not affect the obligation of the child's natural parent to support the child;

(D) The court may order the child's natural parent to pay child support;

(E) It is presumed that termination of parental rights is in the best interest of the child if the child was conceived as a result of the sexual assault;

(F) This paragraph shall not apply if subsequent to the date of the sexual assault, the child's natural parent and custodial natural parent cohabit and establish a mutual custodial environment for the child; and

(G) The custodial natural parent may petition the court to reinstate the child's natural parent's parental rights terminated pursuant to this paragraph.

**Idaho - Idaho Code Ann. § 16-2005 (West 2016)**

(2) The court may grant an order terminating the relationship and may rebuttably presume that such **termination of parental rights is in the best interests of the child** where:

(a) **The parent caused the child to be conceived as a result of rape**, incest, lewd conduct with a minor child under the age of 16 years, or sexual abuse of a child under the age of 16 years, as defined in sections 18-6101, 18-1508, 18-1506 and 18-6602, Idaho Code;

**Illinois- 750 Ill. Comp. Stat. Ann. 46/622 (West 2017)**

§ 622. Allocation of parental responsibilities or parenting time prohibited to men who father through sexual assault or sexual abuse.

(a) This Section applies to a person who has been found to be the father of a child under this Act and who:

(1) has been convicted of or who has pled guilty or nolo contendere to a violation of Section 11-1.20 (criminal sexual assault), Section 11-1.30 (aggravated criminal sexual assault), Section 11-1.40 (predatory

criminal sexual assault of a child), Section 11-1.50 (criminal sexual abuse), Section 11-1.60 (aggravated criminal sexual abuse), Section 11-11 (sexual relations within families), Section 12-13 (criminal sexual assault), Section 12-14 (aggravated criminal sexual assault), Section 12-14.1 (predatory criminal sexual assault of a child), Section 12-15 (criminal sexual abuse), or Section 12-16 (aggravated criminal sexual abuse) of the Criminal Code of 1961 or the Criminal Code of 2012, or a similar statute in another jurisdiction, for his conduct in fathering that child; or

(2) **at a fact-finding hearing, is found by clear and convincing evidence to have committed an act of non-consensual sexual penetration for his conduct in fathering that child.**

**(b) A person described in subsection (a) shall not be entitled to an allocation of any parental responsibilities or parenting time with that child without the consent of the child's mother or guardian.** If the person described in subsection (a) is also the guardian of the child, he does not have the authority to consent to parenting time or the allocation of parental responsibilities under this Section. If the mother of the child is a minor, and the person described in subsection (a) is also the father or guardian of the mother, then he does not have the authority to consent to the allocation of parental responsibilities or parenting time.

(c) Notwithstanding any other provision of this Act, nothing in this Section shall be construed to relieve the father described in subsection (a) of any support and maintenance obligations to the child under this Act. The child's mother or guardian may decline support and maintenance obligations from the father.

**(d) Notwithstanding any other provision of law, the father described in subsection (a) of this Section is not entitled to any inheritance or other rights from the child without the consent of the child's mother or guardian.**

(e) Notwithstanding any provision of the Illinois Marriage and Dissolution of Marriage Act, the parent, grandparent, great-grandparent, or sibling of the person described in subsection (a) of this Section does not have standing to bring an action requesting the allocation of parental responsibilities or parenting time with the child without the consent of the child's mother or guardian.

(f) A petition under this Section may be filed by the child's mother or guardian either as an affirmative petition in circuit court or as an affirmative defense in any proceeding filed by the person described in subsection (a) of this Section regarding the child.

### **Indiana - Ind. Code Ann. § 31-35-3.5-6 (West 2016)**

Sec. 6. A showing by clear and convincing evidence that:

(1) the alleged perpetrator committed an act of rape against a parent described in [section 5\(2\)\(A\)](#) of this chapter; and

(2) the child was conceived as a result of the act of rape;

is prima facie evidence that termination of the parent-child relationship between the alleged perpetrator and the child is in the best interests of the child.

### **Iowa - Iowa Code Ann. § 232.116 (West 2016)**

1. Except as provided in subsection 3, the court may order the **termination** of both the **parental** rights with respect to a child and the relationship between the **parent** and the child on any of the following **grounds**:

p. The court finds there is clear and convincing evidence that the child was conceived as the result of sexual abuse as defined in [section 709.1](#), and the biological **parent** against whom the sexual abuse was perpetrated requests **termination** of the **parental** rights of the biological **parent** who perpetrated the sexual abuse.

### **Louisiana - La. Child. Code Ann. art. 1015 (2016)**

The grounds for **termination of parental rights** are:

- (3) Conviction of a sex offense as defined in [R.S. 15:541](#) by the natural parent which resulted in the conception of the **child**.
- (9) The commission of a sex offense as defined in [R.S. 15:541](#) by the natural parent which resulted in the conception of the **child**.

### **Maine - Me. Rev. Stat. Ann. tit. 19-A § 1658 (2016)**

This section applies to the termination of parental rights and responsibilities with respect to a specific child conceived as a result of an act of sexual assault by the parent of that child.

- 1. Petitioner.** The petition for termination may be filed by the other parent or, if the other parent is a minor, the parent or guardian of the other parent.
- 2. Petition.** The petitioner may file a petition with the District Court that requests the termination of the parental rights and responsibilities of the parent and alleges:
  - A.** That the parent was convicted of a crime involving sexual assault, as defined in Title 17-A, section 253, 254 or 556, or a comparable crime in another jurisdiction, that resulted in the conception of the child; or
  - B.** That the child was conceived as a result of an act of sexual assault, as defined in Title 17-A, section 253, 254 or 556, or a comparable crime in another jurisdiction.
- 3. Termination.** Except as provided in subsection 4, if the petitioner proves the allegation in subsection 2, paragraph A by a preponderance of the evidence, the court shall terminate the parental rights and responsibilities of the parent. If the petitioner proves the allegation in subsection 2, paragraph B by clear and convincing evidence, the court may terminate the parental rights and responsibilities of the parent.
- 4. Exception.** The court is not required to terminate the parental rights and responsibilities of a parent convicted of gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B that resulted in the conception of the child if:
  - A.** The parent or guardian of the other parent filed the petition;
  - B.** The other parent informs the court that the sexual act was consensual; and
  - C.** The other parent opposes the termination of the parental rights and responsibilities of the parent convicted of the gross sexual assault.

### **Michigan – Mich. Comp. Laws § 722.1445 (West 2016)**

Sec. 15.

- (2) If an action is brought by a mother who, after a fact-finding hearing, proves by clear and convincing evidence that the child was conceived as a result of nonconsensual sexual penetration, the court shall do 1 of the following:
  - (a) Revoke an acknowledgment of parentage for an acknowledged father.
  - (b) Determine that a genetic father is not the child's father.
  - (c) Set aside an order of filiation for an affiliated father.
  - (d) Make a determination of paternity regarding an alleged father and enter an order of revocation of paternity for that alleged father.

### **Mississippi- Miss. Code § 93-15-119 (West 2017)**

- (1) A court hearing a petition under this chapter may **terminate** the parental rights of a parent when, after conducting an evidentiary hearing, the court finds by clear and convincing evidence:
  - (a)(i) That the parent has engaged in conduct constituting abandonment or desertion of the child, as defined in [Section 93-15-103](#), or is mentally, morally, or otherwise unfit to raise the child, which shall be established by showing past or present conduct of the parent that demonstrates a substantial risk of compromising or endangering the child's safety and welfare; and

- (ii) That termination of the parent's parental rights is appropriate because reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome; or
- (b) That a parent has committed against the other parent a sexual act that is unlawful under [Section 97-3-65](#) or [97-3-95](#), or under a similar law of another state, territory, possession or Native American tribe where the offense occurred, and that the child was conceived as a result of the unlawful sexual act. A criminal conviction of the unlawful sexual act is not required to terminate the offending parent's parental rights under this paragraph (b).

### **Missouri - Mo. Ann. Stat. § 211.447 (West 2014)**

5. The juvenile officer or the division may file a petition to terminate the parental rights of the child's parent when it appears that one or more of the following grounds for termination exist:

(5) The child was conceived and born as a result of an act of forcible rape. When the biological father has pled guilty to, or is convicted of, the forcible rape of the birth mother, such a plea or conviction shall be conclusive evidence supporting the termination of the biological father's parental rights [...]

6. The juvenile court may **terminate** the rights of a parent to a child upon a petition filed by the juvenile officer or the division, or in adoption cases, by a prospective parent, if the court finds that the **termination** is in the best interest of the child and when it appears by clear, cogent and convincing evidence that **grounds** exist for **termination** pursuant to subsection 2, 4 or 5 of this section

### **Montana- Mont. Code Ann. § 41-3-607 (West 2017)**

(1) A district court may order a **termination** of the parent-child legal relationship after the filing of a petition pursuant to this section alleging the factual grounds for termination as provided for in subsection (2).

(2) Grounds for termination pursuant to this section exist when the parent of a child:

(a) is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born; or

(b) at a fact-finding hearing is found by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act, if applicable, to have committed an act of sexual intercourse without consent, sexual assault, or incest that caused the child to be conceived.

### **New Hampshire - N.H. Rev. Stat. Ann. § 170-C:5-a (2015)**

A petition for **termination of the parent-child relationship** shall be granted in cases where the child's birth is the result of sexual assault of the birth mother and where termination of the parent-child relationship is in the best interests of the child. This section shall apply to a person who has been found to be the father of a child and who:

I. Has been **convicted** of or who has pled guilty or nolo contendere to a violation of sexual assault as defined in RSA 632-A:2 through RSA 632-A:4, or a similar statute in another state against the birth mother for his conduct in fathering the child; or

II. **At a fact-finding hearing, is found beyond a reasonable doubt** to have fathered the child through an act of non-consensual sexual penetration.

### **Oklahoma - Okla. Stat. Ann. tit. 10A, § 1-4-904 (West 2015)**

A. A court shall not **terminate the rights of a parent to a child** unless:

11. **A finding** that the child was conceived as a result of rape perpetrated by the parent whose rights are sought to be terminated;

### **Pennsylvania - 23 Pa. Cons. Stat. Ann. § 2511 (West 2016)**

(a) General rule.--The **rights of a parent** in regard to a child may be **terminated** after a petition filed on any of the following grounds:

(7) The parent is the father of a child conceived as a result of a rape or incest.

**South Dakota - S.D. Codified Laws § 26-8A-26.1 (2012)** (22-22-1 pertains to rape)

In addition to the provisions of § 26-8A-26, the court may find that good cause exists for **termination** of parental rights of a parent who:

(1) Committed a crime defined in § 22-16-4, 22-16-7, 22-16-15, 22-16-20, 22-22-1, 22-22-24.3, 22-22A-2, 22-22A-3, 26-10-1, or subdivision 22-19-1(5), or committed conduct described by any of those statutes that violated the law or ordinance of another jurisdiction having elements similar to an offense described by any of those statutes;

**Texas - Tex. Fam. Code § 161.007 (West 2013)**

**TERMINATION WHEN PREGNANCY RESULTS FROM CRIMINAL ACT.**

(a) Except as provided by Subsection (b), the court shall order the **termination of the parent-child relationship** of a parent and a child if the court finds by **clear and convincing evidence** that:

- (1) the parent has engaged in conduct that constitutes an offense under Section 21.02, 22.011, 22.021, or 25.02, Penal Code;
- (2) as a direct result of the conduct described by Subdivision (1), the victim of the conduct became pregnant with the parent's child; and
- (3) termination is in the best interest of the child.

(b) If, for the two years after the birth of the child, the parent was married to or cohabiting with the other parent of the child, the court may order the **termination of the parent-child relationship** of the parent and the child if the court finds that:

- (1) the parent has been **convicted** of an offense committed under Section 21.02, 22.011, 22.021, or 25.02, Penal Code;
- (2) as a direct result of the commission of the offense by the parent, the other parent became pregnant with the child; and
- (3) **termination** is in the best interest of the child.

**Vermont - Vt. Stat. Ann. tit. 15, § 665 (West 2014)**

(f) The State has a compelling interest in not forcing a victim of sexual assault or sexual exploitation to continue an ongoing relationship with the perpetrator of the abuse. Such continued interaction can have traumatic psychological effects on the victim, making recovery more difficult, and negatively affect the victim's ability to parent and to provide for the best interests of the child. Additionally, the State recognizes that a perpetrator may use the threat of pursuing parental rights and responsibilities to coerce a victim into not reporting or assisting in the prosecution of the perpetrator for the sexual assault or sexual exploitation, or to harass, intimidate, or manipulate the victim.

(1) The Court may enter an order awarding sole parental rights and responsibilities to a parent and denying all parent-child contact with the other parent if the Court finds by clear and convincing evidence that the nonmoving parent was convicted of sexually assaulting the moving parent and the child was conceived as a result of the sexual assault. As used in this subdivision, sexual assault shall include sexual assault as provided in 13 V.S.A. § 3252(a), (b), (d), and (e), aggravated sexual assault as provided in 13 V.S.A. § 3253, and aggravated sexual assault of a child as provided in 13 V.S.A. § 3253a, lewd and lascivious conduct with a child as provided in 13 V.S.A. § 2602, and similar offenses in other jurisdictions.

(A) An order issued in accordance with this subdivision (f)(1) shall be permanent and shall not be subject to modification.

(B) Upon issuance of a rights and responsibilities order pursuant to this subdivision (f)(1), 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.

(2) The Court may enter an order awarding sole parental rights and responsibilities to one parent and denying all parent-child contact between the other parent and a child if the Court finds 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 the Court finds by a preponderance of the evidence that such an order is in the best interest of the child. A conviction is not required under this subdivision and the Court may consider other evidence of sexual assault or sexual exploitation in making its determination.

(A) For purposes of this subdivision (f)(2):

(i) sexual assault shall include sexual assault as provided in 13 V.S.A. § 3252, aggravated sexual assault as provided in 13 V.S.A. § 3253, aggravated sexual assault of a child as provided in 13 V.S.A. § 3253a, lewd and lascivious conduct with a child as provided in 13 V.S.A. § 2602, and similar offenses in other jurisdictions; and

(ii) sexual exploitation shall include sexual exploitation of an inmate as provided in 13 V.S.A. § 3257, sexual exploitation of a minor as provided in 13 V.S.A. § 3258, sexual abuse of a vulnerable adult as provided in 13 V.S.A. § 1379, and similar offenses in other jurisdictions.

### **Washington- Wash. Rev. Code § 26.26 (TBD- H.B. 1543) (West 2017)**

(1) This section applies in cases when a person alleged or presumed to be a legal parent to a child is alleged to have committed a sexual assault that resulted in the victim of the assault becoming pregnant and subsequently giving birth to the child.

(b) Clear, cogent, and convincing evidence that the person seeking parental rights or presumed to be a legal parent committed sexual assault, as defined in this section, against the child's parent, and that the child was born within three hundred twenty days after the sexual assault.

### **Wisconsin - Wis. Stat. Ann. § 48.415 (West 2016)**

Grounds for involuntary termination of parental rights

At the fact-finding hearing the court or jury shall determine whether grounds exist for the termination of parental rights. . . . **Grounds for termination of parental rights shall be one of the following: . . .**

**(9) Parenthood as a result of sexual assault. (a) Parenthood as a result of sexual assault, which shall be established by proving that the child was conceived as a result of a sexual assault** in violation of s. 940.225(1), (2) or (3), 948.02(1) or (2), 948.025, or 948.085. Conception as a result of sexual assault as specified in this paragraph may be proved by a final judgment of conviction or other evidence produced at a fact-finding hearing under s. 48.424 indicating that the person who may be the father of the child committed, during a possible time of conception, a sexual assault as specified in this paragraph against the mother of the child.

(b) If the conviction or other evidence specified in par. (a) indicates that the child was conceived as a result of a sexual assault in violation of s. 948.02(1) or (2) or 948.085, the mother of the child may be heard on her desire for the termination of the father's parental rights.



**FEDERAL LAW:**

**42 U.S.C.A. § 14043h-2 (West 2015)**

The Attorney General shall increase the amount provided to a State under the covered formula grants in accordance with this part 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.