

# My Legal Rights: I was Raped and Got Pregnant

---

## Should I read this?

A recent Washington state law closes a gap that forced some mothers to co-parent a child conceived from a rape. The law creates a court process for rape survivors to terminate (end) or restrict (limit) the rapist's parental rights by presenting clear and convincing evidence that the pregnancy was a result of the rape.

- 
- ❖ Get help from a local Community Sexual Assault Program. Visit <http://www.wcsap.org/find-help>.
  - ❖ "Rape" used here also means child rape. [RCW 26.26A.465\(6\)](#).
- 

## Wasn't there already a legal way to terminate the rapist's parental rights?

Not solely because of the rape. Before this law, a court could only terminate a rapist's parental rights if someone proved the rapist was an unfit parent. The state could ask for parental rights termination in a dependency, a court action where the state tries to take the children away from \*both\* parents. In an adoption case, a judge could terminate a parent's rights.

**Now you can do this without the state's involvement.** If you can prove the child was born because of a rape, you can decide what parental rights you want the rapist to have, if any.

## What if I never reported the rape to the police?

You must be able to prove the rape happened in one of two ways:

- A court convicted the person of or accepted his plea to rape.
- You have **clear, cogent, and convincing evidence** that the person raped you, even if you never reported to the police, or a court never convicted him.

- 
- ❖ You must also prove that the child was born within three hundred twenty days after the rape.
- 

## What is clear and cogent evidence?

It must be more convincing than a preponderance of evidence ("more likely than not"), but less convincing than needed to convict someone of a crime ("beyond a reasonable doubt").

## How can I restrict or terminate the rapist's rights to the child?

You can ask a court to limit or terminate the rapist's rights in a parentage case. There are two ways to do this:

You can start file a **Petition to Stop Parentage Based on Sexual Assault**. The person who raped you is the Respondent. In your Petition, you must state that the child was born as a result of sexual assault.

You might be responding to a parentage case brought by the rapist or the state. The rapist might file a Petition to Decide Parentage or ask the state to do so. The state may start a parentage case to get a child support order, not knowing you were raped. As part of your Response to any parentage case filed by the rapist or state, you must file a **Sexual Assault**

**Allegation.** This form states that the child was born as a result of sexual assault.

- 
- ❖ [Parentage Cases: If You Were Raped and Got Pregnant](#) has forms and instructions.
- 

## What happens after I file the Petition or Sexual Assault Allegation?

There will be a court a hearing about your allegation. You can ask the court to make it a closed hearing so only people directly involved in your case are in the courtroom.

## Will the judge order genetic testing?

Yes, if either you or the rapist asks for it by filing a motion. The court will wait to hold a hearing until the results come back. If the rapist is not the father, you do not need a hearing.

- 
- ❖ [File a Motion for Genetic Testing](#) has forms and instructions.
- 

## Do I have to do anything before the hearing?

You must submit your evidence to the court fourteen days before the hearing proving the rape and that the child was born within 320 days after the rape. You must have a copy of the evidence served on the rapist, or on his lawyer if he has one. You can ask the court to seal your evidence so no one else can see it.

## What does the judge decide at the hearing?

The judge decides if the other person did in fact rape you, and if the child was born because of the rape. A judge who decides you proved this gives the rapist rights to the child only if you want the judge to. The judge can

order that the rapist has no rights (is not a legal parent), or you can allow the rapist to be a legal parent with limited rights.

- 
- ❖ If the judge decides you did not prove the rape, the parentage case will go forward. The judge may award the other person parental rights. You may still be able to restrict the person's time with the child. Talk to a lawyer.
- 

## What rights would the rapist lose?

Unless you specifically agree otherwise in writing, the rapist will NOT have any of these rights:

- To visit with the child.
- To make decisions about the child.
- To inherit from the child.
- To get any notice of adoption of the child.

## Will the child get the rapist's last name?

It is up to you. If the judge finds the rape happened, and you do not want the child to have that person's last name, the judge will not order it.

## I do not want the rapist to have any rights to the child. Can the judge still order him to pay child support?

Only if you ask for it. You can also ask the judge to order the rapist to reimburse you for any costs related to the child's birth. This can include premiums for the child's health care.

## **I was married to the person who raped me. I have filed for divorce. Can I ask the judge to limit or end his rights to our child?**

Yes. You can ask the court to limit the rapist's rights in either of these ways:

- You can still file a Petition to Stop Parentage based on Sexual Assault
- Otherwise, in your divorce you can ask for a parenting plan that gives your spouse limited or no contact with the child because it is not in the child's best interest.

## **My new husband wants to adopt my child. Do we need the rapist's consent to the adoption?**

Not if a court convicted the person of raping you OR you can prove he did. See "What if I never reported the rape to the police," above. You must still file a Petition to Stop Parentage based on Sexual Assault case to get a court to order that the rapist has no parental rights.

## **What if I need legal help?**

- Apply online with [CLEAR\\*Online](https://nwjustice.org/get-legal-help) - <https://nwjustice.org/get-legal-help> or

- Call CLEAR at 1-888-201-1014

CLEAR is Washington's toll-free, centralized intake, advice and referral service for low-income people seeking free legal assistance with civil legal problems.

- **Outside King County:** Call 1-888-201-1014 weekdays 9:15 a.m. - 12:15 p.m.
- **King County:** Call 211 for info and referral to an appropriate legal services provider weekdays 8:00 am – 6:00 pm. You may also call (206) 461-3200, or toll-free 1-877-211-WASH (9274). You can also get info on legal service providers in King County at [www.resourcehouse.com/win211/](http://www.resourcehouse.com/win211/).
- **Persons 60 and Over:** Seniors age 60 or over may call CLEAR\*Sr at 1-888-387-7111, regardless of income. Assets limits may apply. Seniors in King County may call 2-1-1.

Deaf and hard-of-hearing callers can call 1-800-833-6384 for a free relay operator. They will connect you with 211 or CLEAR.

CLEAR and 211 will conference in free interpreters when needed.

---

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

This information is current as of May 2019.

© 2019 Northwest Justice Project — 1-888-201-1014.

(Permission for copying and distribution granted to the Alliance for Equal Justice and to individuals for non-commercial purposes only.)