

COULD YOU SHARE CUSTODY WITH THE MAN WHO RAPED YOU?

In the majority of US states, the law not only fails to protect women who have conceived out of rape, but in many cases it is forcing them to share parental responsibilities with their attackers. Joanna Walters talks to the mothers fighting for justice

Analyn Megison recalls the moment clearly: she was playing in the Florida sunshine with her six-year-old daughter, Mary*, when her phone rang. When she heard the voice on the other end, her stomach dropped. It was a court official explaining that the little girl's father was seeking access to the daughter he had never met. Any custody battle is never welcome, but this was an extraordinary case. Megison looked at Mary – a little girl who likes singing and painting and knows nothing of how she came into the world. The man who was seeking parental rights was the man who had raped Megison when she was 29 and impregnated her.

“I felt like iced water had been poured all over me. The shock took my breath away,” says Megison. “I had already moved to Florida to be far away from where the attack had happened and I thought I had left my past behind.”

What came next was even more stunning: Megison learnt that in Florida, as in the majority of states in America at that time, there were no laws blocking rapist fathers from pursuing parental rights over a child born as a result of their violent act.

This glaring legal loophole has left countless women exposed. US experts estimate that 30,000 women a year in the US become pregnant after being raped. Of those, about 11,000 decide to have the baby and bring it up themselves, although there are no official government statistics on the subject. Thousands of these mothers end up mired in difficult, lengthy and often failed court battles in an attempt to stave off their attacker gaining access to their child, according to Shauna Prewitt – a Chicago-based lawyer and campaigner.

Now Megison suddenly had to attend court hearings in Florida to try to persuade a judge not to let her attacker have access to her daughter.



PHOTOGRAPHED BY ROGER KISBY/REDUX. NAME HAS BEEN CHANGED

HANDS OFF

Analyn Megison spent two years fighting in the US court system to retain sole custody of her now 11-year-old daughter Mary, who was conceived by rape.

The man lived in Louisiana, where she was residing when he raped her. He would phone into court proceedings to argue why he should be allowed to see the child he fathered.

“Hearing his voice was awful. I had to rush out and throw up in the bathroom. I got stomach ulcers from the anxiety. I never knew whether he might turn up in person,” says Megison.

Even now, memories of the attack haunt her. She had met the man through friends when she was 29; they dated briefly, but she broke off the relationship because he was very aggressive, she explains. They still went out with mutual friends occasionally, and one night he bullied his way into her home where he attacked her. Megison came to on the floor alone. She could see and smell her own blood on the carpet. She had cuts and bruises and was sobbing, but didn’t realise in her shock and confusion that while she was out cold he had had sex with her. He was soon arrested and charged with assault and witness intimidation.

It was only weeks later, when she went to the doctor feeling nauseous that Megison discovered she was pregnant and that she had been sexually assaulted.

“I was incredibly upset at first because I thought I had successfully fought him off that night. But then a strange feeling came over me,” she says. “I felt a rush of love for [the baby] that was stronger than my loathing for him.” She gave birth to Mary in 2004.

The horrifying reality for some women who have conceived via rape is that they not only have to face their assailant in court, but also hand over their child to them on a regular basis.

Amy, who asked that her real name not be used for legal reasons, lives in the state of Arizona and has been forced by a judge to share 50-50 custody of her little boy with his biological father, who, she alleges, raped her. Now, Amy and her accused attacker, Steve, also not his real name, meet at least twice a week to hand their four-year-old son back and forth between them. She has taken two

The reality is they not only have to face their assailant in court, but hand their child over too



protection orders out against Steve for harassment, and for this reason their encounters have to take place at a police station. Amy has petitioned authorities to block Steve’s access to her son, “but I was told I’m not considered a victim in the state of Arizona because there wasn’t a criminal conviction for rape”, she says.

Amy met Steve online in early 2010, when she was 39. After dating briefly, she ended things, though they continued to see each other on and off. Then, four months later, she broke her back falling down stairs. While she was at home recovering, Steve would visit, bringing her cups of tea and food. He continually pestered her for sex, she says, and then feeling bullied, she finally consented.

However, when they started having sex, she was in unbearable pain and started screaming, telling him to stop. “It was excruciating,” recalls Amy. “The more I yelled, the harder he went. I was crying. When he finished he just walked out.”

She went to the police, but Steve alleged she had seduced him. The police looking into her case wouldn’t file charges because they believed it was a weak “he says, she says” case, according to Amy. Once her son was born, the court denied her application to block Steve’s access to the little boy. When she sees Steve, she puts on a brave face for her boy, but sometimes the tears come.

“I pretend I’m having trouble with my contact lenses and then I fiddle

around changing into my glasses while I try to compose myself,” she says. “Steve is aggressive. He has temper tantrums. It’s incredibly stressful having to share my son with this crazy man. It’s torture.”

Rapist fathers seeking parental rights are almost always the victim’s ex-husband or ex-boyfriend, a spurned suitor, a work associate, neighbour or acquaintance in the experience of Prewitt. Prewitt is one of America’s most knowledgeable legal experts on the issue, and for more than five years she has been campaigning for the introduction of laws to protect rape survivors and their children.

Prewitt maintains that part of the motivation can be psychological; that the rapist simply wants to continue to exert power over his victim, and seeking rights to the child is a form of extreme control or revenge. Or claiming parental right can be a tactical move: the rapist threatens he will take the mother or mother-to-be to court seeking parental rights over the baby if she doesn’t drop criminal rape charges against him.

Prewitt, who is now 34, also has a very personal connection to this issue. She was raped at age 21 by someone she knew and fell pregnant as a result. She considered having an abortion because she felt unprepared to be a mother at such a young age, but decided to keep the baby and says she doesn’t regret her decision. “Raising my daughter gives me unimaginable joy,” she says.

But the man who raped her sought custody of her daughter, and Prewitt

THE FIGHT FOR RIGHTS

Far left: Megison says it's a struggle to level the law in the US. Left: Shauna Prewitt has led the campaign to terminate the parental rights of rapists. Right: Prewitt speaks at a press conference, proposing a bill to protect mothers who have conceived via rape.



US congresswoman Debbie Wasserman Schultz introduced the Rape Survivor Child Custody Act that some states are slowly starting to adopt.



was shocked to find that, at that point, there was no law sufficient to block him. It took a two-year custody battle before his parental rights were terminated.

Despite her win, the significant gaps in the law troubled Prewitt. "I didn't want other women to have to go through what I went through," she says. She launched a campaign for women to be allowed to present "clear and convincing evidence" to a family or civil court judge that their baby was conceived through rape, and the rapist should therefore be denied access to that child. Prewitt says that evidence could involve examples such as text messages or emails from the man where he admits forcing her to have sex, but did not face charges, or a police report that details an assault, but where the man took a plea deal by admitting to lesser charges.

Simultaneously, on the other side of the country, Megison was fighting to help protect vulnerable women and children in Florida. She helped get a new state law passed in 2014, which denied a rapist father access to a child born following his attack if he has a criminal conviction for rape, or a judge agrees there is clear and convincing evidence to deduce that is what happened.

Inspired by Megison's work, Florida congresswoman Debbie Wasserman Schultz introduced the federal Rape Survivor Child Custody Act (which allows for proof of rape before a family or civil court judge) and was passed by the US congress in May last year.

However, the federal government cannot force individual US states to adopt the new law. The sad reality is that

across the US, only 15 states have either implemented the Rape Survivor Child Custody Act (RSCCA) or already had equivalent legislation. Women who become mothers via rape in the 35 other states have insufficient protection. Of these, 24 states plus the District of Columbia still require a criminal conviction and the mother to mount a significant legal case before a judge will block the rapist's parental rights. In the remaining 11 states, there is no legislation preventing rapists from being awarded custody of the child.

"I'm disgusted that more states are not rushing to adopt this new law. They should be ashamed of themselves. America can be very backward when it comes to giving women fair treatment under the law, and some states are more backward than others," says Megison.

"You can get courts to protect a child from neglect or abuse by either parent without there having to be a criminal conviction, but this law that empowers mothers is slow to be adopted. People should be shocked and horrified."

While some legal gains are being made, victims not living in the 15 RSCCA states still lack legal safeguards and are sometimes forced to share custody of their child with their attacker.

Amy has emails from Steve in which he talks about "making amends" for hurting her and documents from her counsellor about the emotional effect of the attack, all of which Amy believes

could convince a family court judge that her son was born of rape.

"I have fallen through the gaps in the system. I feel as though I'm being violated all over again when he confronts me in the police station as we are handing over our son. I even have to share him on Christmas Day," says Amy.

Now she wants to make a difference and get the Rape Survivor Child Custody Act passed in her state and others. "I'm going through hell with him messing with my son's life and mine," she says.

In Massachusetts, a 22-year-old known by the pseudonym Holly Turner is currently embroiled in a court case because a judge

will not terminate the parental rights of a man who was convicted of raping her. She was 14, he was 20, and they met at a church youth group.

Deeply religious, Turner kept the baby and is raising the little

girl with the help of her widowed mother, at the same time attempting to finish her degree, with ambitions to become a nurse or a lawyer.

The criminal court put the rapist on probation, then a civil court ordered him to make maintenance payments to the child – but that gives him an ongoing connection to the mother and the capacity to ask for visitation and other parental rights to the child until she turns 18. Turner wants the man to pay criminal restitution instead and be made to stay well away from her family. ▷

"I even have to share my son with my rapist on Christmas Day"

– Amy



COULD THIS HAPPEN IN AUSTRALIA?

Yes, according to Angela Lynch, acting coordinator of Women's Legal Service Queensland. "There is nothing preventing a man convicted of rape from applying for parenting orders," she says. "The court's primary concern is the best interests of the child and the court could, in theory, determine it is in the best interests of the child to have a relationship with their father, despite the criminal conviction. [However], we believe the mother would have a very strong argument and a high chance of obtaining [sole custody]." Despite this being a legal possibility, Lynch says she's not aware of any instances in Australia where a convicted rapist has successfully applied for custody of a child conceived via the assault.

Megison says her daughter is unaware of how she was conceived, but plans to tell her gently in the future.

She has to go to court over the child payments, where she must meet with her rapist regularly. "I'm reminded of the violence he committed against me every time I see him. The courts have tied him to me by claiming he is a father. He isn't, he's a rapist," she says.

In Nebraska, 22-year-old Noemi Martinez has been lobbying politicians to adopt the Rape Survivor Child Custody Act – so far in vain. She was raped by a co-worker when she was 18. Nebraska has a law allowing a victim to block her attacker from having contact with the child if there has been a criminal conviction of first-degree rape. But in Martinez's case, her attacker struck a plea deal, where he was found guilty of third-degree rape, which is not covered by the law protecting children conceived in an assault.

When her daughter was still a baby, her rapist turned up at her house with a letter saying his mother wanted to see the little girl and that he wanted her to have his last name. Martinez's daughter, Isabelle, is now four, and

has court-approved short visits with her biological father every week.

"Isabelle is so confused. She doesn't understand who this man is, and she doesn't want to visit him. But I'm forced to take her. There needs to be a change in the law in my state to protect children," explains Martinez.

"Sexual assault survivors who are parenting as a result of rape need the full protection of the law, so that they don't have to live in terror that the rapist is going to demand to parent that child," says Terri Poore, policy director at the National Alliance to End Sexual Violence in Washington, DC. "We are spreading the word

of the horror and trauma the mothers go through when that happens and we need more states to step up their efforts and pass this new law urgently."

Megison says she is "appalled at the lack of common sense in Nebraska. But Noemi is not alone. I don't understand exactly why states are hesitating, but we need to change hearts and minds as quickly as possible."

"The courts have tied him to me by claiming he is a father. He isn't, he's a rapist"

– Holly Turner

For Megison, the fight to protect her daughter dragged on for two years through the Florida civil court system. Finally, the judge demanded a full hearing that would have required both sides to appear in court. Faced with the idea of having to testify about exactly what had happened in Louisiana, the man dropped his case in 2012. The judge also ruled that Mary had been conceived through rape, and that the father could not have access to the child.

"It had been such an awful experience, feeling humiliated in court as I was being questioned with everyone watching," says Megison. "Then I got my ruling and I cried with joy."

Mary is 11 now. She still doesn't know how she was conceived. Megison plans to tell her, very gently, one day. Right now, the focus is all on school and play. "She's amazing," says Megison, proudly. Mary is a tough little thing who is good at karate, but is also creative and enjoys singing in the choir and art.

"We are still struggling to change the law across the land, but when I think about the joy of my daughter I know this battle and my own scary court case have been worth it a hundred times over. For me, love conquers fear." □