



The Commonwealth of Massachusetts
House of Representatives
State House, Boston 02133-1054

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Committees:
Environment and Natural Resources
State Administration
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Elder Affairs

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Representative Michael S. Day, Chair
Joint Committee on the Judiciary
State House, Room 136
Boston, MA 02133

Senator Jamie B. Eldridge, Chair
Joint Committee on the Judiciary
State House, Room 511-C
Boston, MA 02133

Dear Chair Day and Chair Eldridge,

I write to you in support of my bill, H.1521, *An Act protecting survivors of rape and their children* which is currently before the Joint Committee on the Judiciary. This bill would further restrict the ability of people who attempt or commit rape or sexual assault from obtaining visitation rights in key cases.

It is self-evident that survivors of crimes as violative as rape and sexual assault deserve to be protected by the state from their attacker, as do their children, who are uniquely vulnerable to abuse and mistreatment. The Center for Disease Control and Prevention reports that 12,000 pregnancies from sexual assault are carried to term and raised by their birth mothers each year in the United States. This is likely an undercount given that only 36 percent of rapes are reported in the first place. For this reason, most states provide some protection for rape survivors from attackers seeking parental rights. Massachusetts is one of these states and in the status quo, courts are not permitted to allow those who conceived a child through rape from having visitation rights. There are several problematic exceptions built into the existing statute, however, that compromise the law's intent.

For one, the current law allows judges to make an independent decision about whether the rapist should be granted visitation. Section 3(a) of Chapter 209C provides the following caveat (bolding for emphasis):

provided, however, that a court may make an order providing visitation rights to a parent convicted of rape under section 23 of said chapter 265, if (i) visitation is in the best interest of the child and (ii) either the other parent of the child conceived during the commission of that rape has reached the age of 18 and said parent consents to such visitation **or the judge makes an independent determination that visitation is in the best interest of the child.**

As a result, judges are compelled to hold “best interest hearings” when a rapist requests visitation. It is true that in almost all cases, Massachusetts Probate and Family Court judges will not grant visitation to a perpetrator, however it is harmful to merely allow the possibility. If the judge does side with the rapist, the victim could be forced to co-parent with the attacker for up to 18 years. More crucially, the wording in the current statute gives rapists procedural ground to request visitation, which forces rape survivors to confront their rapist in court, relive their trauma, and fear for the safety of their child, regardless of whether the result is ultimately a denial of visitation for the rapist. Such proceedings can also be financially costly for the mother, at a time when they have a child to feed, clothe and house, and may be single.

Furthermore, the current law only applies in cases where the perpetrator has been convicted of a crime. Given that rape is rarely reported and only a tiny fraction of rapes reported lead to a successful conviction in court, the current protections apply far too narrowly. This legislation would expand protections to include individuals against whom a charge under applicable statutes has been continued without a finding, or who after a hearing is found by clear and convincing evidence to have committed a crime related to rape or sexual assault.

The bill also expands the circumstances in which survivors of rape are protected from requests for visitation and custody. Not only are children conceived because of the crime of rape protected, but also children in the womb at the time of the crime, children that the survivor and the defendant have in common, and children that were a victim or witness to the crime.

It is conceivable that there may be marginal cases where a mother does want to co-parent with her rapist. Although exceedingly rare, there is still an exception preserved in the bill for such a case. Rather than demanding an exploitable “independent determination” the bill allows visitation rights to be granted only when such visitation is found to be in the best interests of the child *and* the mother of the child affirmatively consents.

Unfortunately, the arguments presented in this testimony are not just hypothetical examples of what can happen under the current guidelines. Take [the case of Jamie Melendez](#), a former resident of Braintree, who has terrorized the woman he assaulted in Massachusetts courts for nearly a decade through his requests for visitation. There are many more cases in the state where rapists could attempt to get visitation rights, perhaps to gain further control over their victims. H.1521 would make such attempts impossible and help survivors focus on recovery and parenting.

Thank you for consideration of this written testimony and our request that the committee favorably report H.1521 without delay. I look forward to the opportunity to discuss this matter with you further.

Sincerely,



Carmine L. Gentile
State Representative
13th Middlesex District