

Rape Survivors, Pregnancy, and Raising Children:

Know Your Rights in Washington State



www.legalvoice.org

If you became pregnant after a sexual assault, you have the right to make decisions about the pregnancy and, if you give birth, the child. You have the right to legal protections that include keeping the offender out of your life and, if you choose to continue the pregnancy, your child's life. This publication explains those rights.

A note about terms: We understand that some words may be triggering to survivors of assault. In this memo, we use the term "survivor" when referring to a person who has been sexual assaulted, and "offender" when referring to the person who committed the assault.

I Was Raped and Became Pregnant. What Do I Do?

You have options, including having an abortion or not. If you choose to continue the pregnancy, there are steps you can take to limit or exclude the offender from your and the child's life. You may also have the right to choose adoption without interference from the offender.

How Can I Keep the Offender Out of My Life?

You have the options of asking for either a Sexual Assault Protection Order (SAPO) or a Domestic Violence Protection Order (DVPO), depending on which one best fits your circumstances. You can find out more about these orders by talking to an advocate about your options. See the listings under "Protection Orders" in Resources at the end of this publication. If, because of the assault, you become pregnant and have a child, you can ask the court to restrict the parental rights of the offender. This publication explains those rights.

If You Choose to End the Pregnancy

What Are My Rights If I Choose to Have an Abortion?

In Washington State, you have the legal right to have an abortion for any reason during the first trimester and most of the second trimester; up to about 24-25 weeks. You also have the right to an abortion after that time if your health or life are in danger.

If you are low income, Washington State's Apple Health program will pay for the abortion, regardless of your age or immigration status.

For more information about abortion and your rights, see our publication *Abortion Rights in Washington State*, listed in Resources below.

Does the Offender Have a Right to Be Involved with My Pregnancy Choices?

No. You have the right to make your own choices about your pregnancy no matter what the offender says or does.

If the offender is controlling or threatening you, and is using your pregnancy as part of this abuse, this is called "reproductive coercion." If you are experiencing this, consider getting help from your local domestic violence program. See Resources at the end of this publication.

Do I Have to Report the Assault to Law Enforcement?

No. No matter what you decide to do about the pregnancy, you have the right to decide to report or not report the sexual assault to the police. Either way, you can take steps to limit or exclude the offender from your life and the child's life.

If You Continue(d) the Pregnancy

Does the Offender Have a Right to Be Involved with My Pregnancy?

No. No one has a legal right to be involved with your pregnancy no matter the situation or how old you are.

Does the Offender Have a Right to Be the Parent of the Child?

Possibly. It depends on what your relationship with the offender is:

- **The offender is your spouse:** If your spouse is the offender, and the child is born during your marriage/domestic partnership (or within 300 days of your divorce) your spouse will be recognized as the child's legal parent automatically unless you take court action to change that. This publication explains those rights.
- **You have a spouse, but that person is not the offender:** If your spouse is *not* the offender, and the child is born during your marriage/domestic partnership (or within 300 days of your divorce) your spouse will be recognized as the child's legal parent. Once the child is born, however, the offender can ask the court for parental rights. If that happens, you have a legal right to ask the court to not give parental rights to the offender because of the sexual assault. This publication explains those rights.
- **You do not have a spouse, and the offender is a stranger:** In these situations, it is highly unlikely that the offender would do anything to try to get rights to your child, but it could happen. If the offender does ask the court for parental rights, you have a legal right to ask the court to not give parental rights to the offender because of the sexual assault. This publication explains those rights.
- **You do not have a spouse, and you are or were in a relationship with the offender.** In this situation, it is possible that the offender could be what is called a "presumed parent," or could try to become a legal parent through the courts. If that happens, you have a legal right to ask the court to not give parental rights to the offender because of the sexual assault. This publication explains those rights.

What If the Offender Is the Child's Legal Parent Already?

You can ask a court to terminate or limit the parental rights of the offender. This publication explains those rights.

What If I Decide to Place the Child for Adoption?

If the offender was convicted of the sexual assault, or you can show a court that the offender committed the sexual assault that caused you to become pregnant, the offender has no right to object to the adoption. If you do want the offender to be asked to give consent to the adoption, you can do that.

It is important to get legal advice about giving a child up for adoption, especially if you want to make sure that the offender cannot get involved. Talk to a lawyer about your specific situation. See the Resources section for information about how to get legal help.

Terminating the Offender's Parental Rights

Do I Have to Report the Assault to Law Enforcement to Do This?

No.

Must the Offender Be Convicted or Plead Guilty of the Assault?

No.

How Do I Prove the Assault Happened?

There are two ways you can prove to a court that the offender committed a sexual assault that resulted in your pregnancy. There is a form to fill out and file with the court, called a "Sexual Assault Allegation" form. On the form you must either

- a. Show that the offender was convicted or plead guilty to a crime of sexual assault, and that the child was born within 320 days of that assault, or
- b. Show "clear, cogent and convincing evidence" (which basically means "strong evidence") that the offender sexually assaulted you and, as a result, you became pregnant and gave birth to the child.

There are many ways to show strong evidence that you were sexually assaulted and that you became pregnant as a result. The first is to give your own sworn testimony, explaining what happened in as much detail as you can. You do this using a Declaration form (see Resources). For some survivors, it can be emotionally difficult to write down the story of what happened. Lawyers and/or sexual assault victim advocates can help you with this. Sexual assault victim advocates cannot give you legal advice, but they can support you while you write your story. A lawyer who represents you can help explain to you what is most important to include in your written statement, and can give you legal advice.

If there are any witnesses who saw or know about the sexual assault, you can ask them to write statements for you too, using the same declaration form.

You don't have to work with a lawyer to do this, but a lawyer will be able to help you with the paperwork, make sure you are following all the court rules, and speak for you at court hearings. See the listings under "Legal Help" in Resources at the end of this publication.

How Do I File a Sexual Assault Allegation Form?

First, a note about the July 23, 2019 date you will see below: The ability to restrict parental rights because of sexual assault is very new. The law includes a grace period for survivors in this situation to restrict parental rights even if the child is 4 or older. After July 23, 2019, survivors will only be able to do this if the child is younger than 4. Some exceptions are noted.

Also, a "presumed parent" is someone who, for a certain amount of time, has had a parent-like relationship with the child.

Here are short descriptions of how to file a Sexual Assault Allegation form (see Resources) depending on the type of case and how old the child is.

1. **You are responding to a "Petition to Decide Parentage"** (filed either by the offender or the state of Washington):
 - If your child is younger than 4, you can file the Sexual Assault Allegation form with your response.
 - If your child is 4 or older, and you are responding before July 23, 2019, then you can still file the Sexual Assault Allegation form, but **ONLY** if the offender was either found guilty or pled guilty to sexually assaulting you, or, in a different case, a court found that the offender sexually assaulted you (like a sexual assault protection order case or other civil case). *The only exception* to the July 23, 2019, time limit is if your child has no presumed parent or legal second parent.
2. **You are filing your own case** to ask a court to take away (or "disestablish") the offender's parental rights:
 - If your child is younger than 4, and the offender is the legal parent or could be a presumed parent, you can file a "Petition to Disestablish Parentage." When you file that paperwork, file with it a Sexual Assault Allegation form, and ask the court to hold a hearing. See the listings under "Legal Help" in the Resources section at the end of this publication.
 - If your child is 4 or older, and it is not yet July 23, 2019, you can still file the Sexual Assault Allegation with the Petition to Disestablish Parentage, but **ONLY** if the

offender was either found guilty or pled guilty to sexually assaulting you, or, in a different case, a court found that the offender sexually assaulted you (like a sexual assault protection order case or other civil case). *The only exception* is when your child has no presumed parent or legal second parent, and no one has acknowledged in a legal document called an “affidavit” that he or she is the child’s other parent. In those situations, there is no time limit for you to file a Sexual Assault Allegation now or after July 23, 2019.

3. You are **getting a divorce or legal separation** from the offender:

- If your child is younger than 4, you can file the Sexual Assault Allegation form with your divorce paperwork.
- If your child is 4 or older, and it is not yet July 23, 2019, you can still file the Sexual Assault Allegation with your divorce paperwork, but **ONLY** if the offender was either found guilty or pled guilty to sexually assaulting you, or, in a different case, a court found that the offender sexually assaulted you (like a sexual assault protection order case or other civil case). You still have to prove that your child was born as a result of this sexual assault.

What Will Happen at the Court Hearing?

At the hearing about the sexual assault, you will attend and the offender can attend. The judge will probably ask you questions. If there are lawyers involved, the lawyers may or may not be allowed to ask questions. If the offender is present but does not have a lawyer, the offender may or may not be allowed to ask you questions. This is one of the reasons why it can be helpful to have a lawyer or sexual assault victim advocate with you. If you are worried about your privacy, you can ask the court to “close” the courtroom to the public, and keep the paperwork private. See Resources at the end of this publication.

What Happens After the Hearing?

If the court finds the offender committed the sexual assault, then the court must either:

- a. Enter an order stating that the offender is not the legal parent of the child (terminating parental rights) as you requested, or
- b. Enter an order limiting the offender’s parental rights to the child as you requested, if it’s in the best interests of the child (see next Q&A).

Can the Court Just Put Limits on the Offender’s Relationship with the Child?

Yes, you can ask the court to put limits on the offender’s relationship with the child. This may be the only thing you can do if the offender already has legal right to the child, your child is 4 or

older, and it is after July 23, 2019 (this deadline is explained above under “How Do I File a Sexual Assault Allegation Form?”).

In other cases, you may want the offender to be recognized as the legal parent, but not want the offender to have any contact with the child.

In any kind of case where the court is considering parenting time, the court must limit the contact between the offender and the child if the court finds that the child was born as a result of the offender sexually assaulting you.

How Long Does It Take?

The entire process can take several weeks or more. It depends on the kind of case and the court’s schedule.

Also, cases can last much longer if the offender is not cooperative. If in your case the offender files a lot of motions, makes false claims, files different cases in other jurisdictions, or uses other tactics meant to harm you emotionally and financially, this is called “abusive litigation” and the court does have the power to stop it. See the Legal Voice publication *Abusive Litigation: When Your Abuser Exploits the Legal System* listed in Resources.

Do I Need a Lawyer?

You don’t have to have a lawyer, but working with a lawyer is strongly recommended for this type of case. See listings under “Legal Help” in Resources at the end of this publication.

Are Lawyers Available to Help Me?

There are some resources available for sexual assault survivors who need lawyers and cannot afford to hire them. See listings under “Legal Help” in Resources below.

What If There Is a Prosecutor Involved? Can They Help Me?

If the offender is being charged with sexually assaulting you, you may be working with a prosecutor or a victim advocate at a prosecutor’s office. Or, you may be working with a prosecutor because the state wants to collect child support from the offender, and the prosecutor filed the parentage case. In either case, the prosecutor is not your lawyer, cannot and will not do the Sexual Assault Allegation paperwork for you, and will not represent you in these cases.

However, there is something the prosecutor or victim advocate can do to help you: they can give you copies of the court records or other documents in the criminal case. You can use these

documents in the civil case to help prove that you were sexually assaulted by the offender and the child was born as a result of the sexual assault.

Will There Be a DNA Test? If Yes, Do I Have to Pay for It?

The court can decide to order a DNA test (“genetic testing”), but it doesn’t have to. If the court does order genetic testing, it will happen before the hearing on the Sexual Assault Allegation.

The law doesn’t say who will have to pay for the test. Usually, the courts order the person who requested the test to pay for it. If you are the one requesting it, the court may order you to pay for it, or may order you and the offender to share the costs.

What If the DNA Test Shows the Offender Is Not My Child’s Biological Parent?

If the court orders genetic testing, and the results show that the offender is not a biologically parent to your child, then the court will not have the Sexual Assault Allegation hearing. After that, the case will most likely be over.

What If I Am Already Parenting with the Offender Because I Had No Choice?

In some cases, depending on the age of the child, you may still be able to ask a court to terminate the parental rights of the offender. This is explained above, under “How Do I File a Sexual Assault Allegation Form?”

In other cases, your only option may be to ask a court to limit the contact between the offender and the child. See “Can the Court Just Put Limits on the Offender’s Relationship with the Child?” above.

In some cases, it may be very difficult to prove to a court that the child was born as a result of the offender sexually assaulting you. If you are in that situation, you are not alone. You can contact a sexual assault survivors’ advocacy program in your community for help, support, and referrals. See the resources section below.

Will the Offender Get to Have Time with My Child During the Court Process?

That depends on the circumstances.

If the offender *doesn’t* have an existing relationship with the child, then no, the court will not order parenting time for the offender during the court process.

If the offender *does* have a relationship with the child, the court may grant your request to restrict the offender’s rights to the child for the time before the hearing. However, the court

may *not* restrict the offender's rights if the child is not in danger *and* you are in one of the following situations:

- a. The offender is the presumed parent of the child, and the court finds that it is in the child's best interests to allow contact between the offender and the child.
- b. You have been co-parenting with the offender and there is already a court order in place giving that person time with your child.
- c. You are married to and have been co-parenting with the offender.

Important: Even in these situations, if the child is in danger, you can ask a court to temporarily limit or prohibit the offender from having time with the child.

If you or the child are in immediate danger from the offender, you can file a petition for a domestic violence protection order, or, if you have no relationship with the offender, a sexual assault protection order. See listings under "Protection Orders" in Resources at the end of this publication.

What about Child Support?

The court can order the offender to pay child support, but you have the right to decline it. If you have declined child support from the offender, the state will not contact the offender for payments even if you apply for or are receiving public benefits (which usually results in the state contacting the other parent for payments). If later you decide that you do want to collect or deny child support, you can.

What About the Child's Right to Inheritance?

The law is not clear about this. If the offender's parental rights are terminated, then that person is not a legal parent. That person could then argue that the child is not their child for purposes of inheritance. Whether or not a court would agree to that remains to be seen.

However, you can protect your child's right to inheritance by asking the court not to terminate the offender's parental rights, but to just limit that person's rights to parent your child. If the court finds that what you are asking is in the child's best interests, the court can enter an order reflecting what you want.

Can I Get the Offender's Name off the Child's Birth Certificate?

Yes. The court can include in its final order that the child's birth certificate can be changed. Once you have that court order, you can get the birth certificate changed by following the instructions on the Washington State Department of Health website, linked in Resources at the end of this publication.

Are the Court Records Public?

Most court records are open to the public. But courts are allowed to block public access to documents in certain cases. This is called “sealing” case records. Parentage cases are usually sealed. There is a check box on the Sexual Assault Allegation form to request that the records in your case – including declarations, evidence, forms, etc. – be sealed. You can also file a motion requesting that the court hearings be closed to the public. See links under “Court Forms” in the Resources section below.

What If the Offender Violates the Order?

It depends on what the offender does. If the offender has been found to not be your child’s parent, or has limited parental rights, and takes the child somewhere anyway, you should call the police immediately. See listings under “Legal Help” in Resources at the end of this publication.

If the offender does something less serious that is not allowed under your court order, you may file a motion with the court to ask that the offender be found “in contempt” of the court order. The process to file a motion for contempt is complicated. See listings under “Legal Help” in Resources at the end of this publication.

Can the Order Terminating the Offender’s Legal Rights Be Changed?

Yes, but only in very limited circumstances. If you want to change the order, talk to a lawyer. See listings under “Legal Help” in Resources at the end of this publication.

Resources

Survivor Supports and Advocacy

- [King County Sexual Assault Resource Center](#)
Online: www.kcsarc.org/
- Washington Coalition of Sexual Assault Providers: Local community sexual assault advocates are available to help and support survivors.
Online: www.wcsap.org/find-help
- Washington Information Network (WIN) 2-1-1: For referrals to services in your area.
By phone: 2-1-1, Monday through Friday between 8:00 a.m. and 6:00 p.m.
Online: www.win211.org

- Washington State Coalition Against Domestic Violence
Online: <https://wscadv.org/>

Legal Help

- Family Law/Courthouse Facilitators
Online: www.courts.wa.gov/court_dir/; click on “Courthouse Facilitators” under “Other Directories”
- Legal Voice publications:
Online: www.legalvoice.org/tools-lawyers
 - *How to Find a Lawyer and Other Legal Resources in Washington State*
 - *Working With a Lawyer*
- Low-income people living in King County: Call Washington Information Network (WIN) 2-1-1 for referrals to legal services in your area.
By phone: 2-1-1, Monday through Friday between 8:00 a.m. and 6:00 p.m.
Online: www.win211.org
- Low-income people living outside King County: Call the CLEAR Line.
By phone: 1-888-201-1014, Monday-Friday from 9:15 am to 12:15 pm
Online form: <https://nwjustice.org/get-legal-help>
- Sexual Violence Legal Services: For legal information and assistance.
By phone: 1-844-999-7857 (toll-free) or 206-832-3620, open weekdays
Online: www.svlawcenter.org
- Washington LawHelp: Legal information and DIY forms for a range of legal issues, including family law and protection orders.
Online: www.washingtonlawhelp.org

Birth Certificates

- *Changing a Birth Certificate After a Court-Ordered Name Change*, Washington State Department of Health
Online:
www.doh.wa.gov/LicensesPermitsandCertificates/BirthDeathMarriageandDivorce/CourtOrderedNameChange

Protection Orders

- *Domestic Violence: Can the Legal System Help Protect Me?*, by the Northwest Justice Project
www.washingtonlawhelp.org/resource/domestic-violence-how-the-legal-system-can-he?ref=e3aTg
- *Understanding the Sexual Assault Protection Order, A Step by Step Guidebook* (PDF), by the Sexual Violence Law Center
www.washingtonlawhelp.org/resource/understanding-the-sexual-assault-protection-o?ref=tjBht

Related Publications

- *How to Write a Declaration in a Family Law Case*, by Northwest Justice Project
Online: www.washingtonlawhelp.org/resource/how-to-write-a-declaration-in-a-family-law-ca?ref=IElWH
- Legal Voice publications:
Online: www.legalvoice.org/tools
 - *Abortion Rights in Washington State*
 - *Abusive Litigation: When Your Abuser Exploits the Legal System*
 - *Leave from Work for Survivors of Domestic Violence, Sexual Assault, or Stalking*
 - *Parenting Issues for Same-Sex Couples* (for information on the different ways people can become legal parents)

Court forms

- Washington State Courts form library: Here are the forms mentioned in this publication. YOU MAY NEED ADDITIONAL FORMS. Talk to a lawyer about your situation.
Online: www.courts.wa.gov/forms; click on “View the List of all Forms”
 - Sexual Assault Allegation form:
 - *FL Parentage 365 – Sexual Assault Allegation*
 - Basic forms depending on your case:
 - *FL Parentage 301 – Petition to Decide Parentage*
 - *FL Parentage 303 – Response to Petition to Decide Parentage*
 - *FL Parentage 361 – Petition to Disestablish Parentage – Criminal or Civil Finding of Sexual Assault* (Filing time limit extended to July 23, 2019)
 - Other forms you may need:
 - *FL Parentage 329 – Sealed Birth Certificate or Paternity Document* (Cover Sheet)
 - *FL All Family 135 – Declaration of (name): _____* [See listings under “Related Publications” above for helpful information about declarations.]

- Forms to request the hearing be closed to the public: Fill out these blank motion and proposed order forms.
 - *FL All Family 181 – Motion for Order for:* _____
 - *FL All Family 182 – Order:* _____
- Forms to request a fee waiver (for the parentage case):
www.courts.wa.gov/forms/?fa=forms.contribute&formID=87

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 **January 2018**.

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