

## Senate Judiciary Committee

*Jennifer Horgan 271-3092*

**SB 166**, relative to termination of the parent-child relationship in cases of sexual assault.

**Hearing Date:** January 31, 2017

**Time Opened:** 9:40 a.m.

**Time Closed:** 10:14 a.m.

**Members of the Committee Present:** Senators Carson, Lasky, French, Gannon and Hennessey

**Members of the Committee Absent :** None

**Bill Analysis :** This bill provides that upon a showing that the child's birth is the result of sexual assault of the birth mother, there shall be a rebuttable presumption that termination of the biological father's parental rights is in the best interest of the child.

**Sponsors :**

Sen. Lasky  
Sen. Carson  
Sen. Innis  
Sen. Soucy  
Rep. Wall

Sen. Birdsell  
Sen. Gray  
Sen. Kahn  
Sen. Watters  
Rep. Walz

Sen. Bradley  
Sen. Hennessey  
Sen. Reagan  
Rep. Keans

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**Who supports the bill:** Senator Lasky; Senator Carson; Senator Soucy; Senator Innis; Senator Birdsell; Senator Watters; Senator Long; Representative Keane; Representative Wall; Representative Long; Representative Horrigan; Representative Somssich; Keith Kuenning (Child and Family Services); Dawn McKinney (NH Legal Assistance); David Vicinanzo (Attorney for Survivor); Meredith Cook (Roman Catholic Bishop of Manchester); Linda Douglas (NHCADSV); Amanda Grady Sexton (NHCADSV)

**Who opposes the bill:** No one

**Summary of testimony presented in support :**

**Senator Lasky**

- This issue was acted on last session and SB166 builds on it.
- Grants the petition for the termination of the parent-child relationship when the birth mother was sexually assaulted.
- This bill adds a key element that when showing the child's birth is a result of a sexual assault there shall be a rebuttable presumption that termination of the biological father's parent-child relationship is in the best interest of the child.
- This gives the courts more particular guidance regarding how to go about these situations.

**Amanda Grady Sexton and Linda Douglas** (NH Coalition Against Domestic and Sexual Violence)(provided written testimony)

- Has worked with victims for the past 20 years.
- Rape survivors have the ability to be good parents, as long as they have physical and emotional safety.

- When a woman who was raped chooses to keep her child she commits to keeping that child safe.
- If the perpetrator is there that removes that feeling of safety and they can become depressed, have flashbacks, be hyper vigilant, etc. which can prevent her from being an effective parent.
- Recently testified in a case of a 13 year old that was raped and kept her child.
- When the rapist evoked parental rights, he did not have to prove that it was in the best interest of the child. That burden of proof fell to the victim.
- The perpetrator in this case had been convicted and was serving his sentence in prison.
- The victim had to take time off work and school in order to go to multiple hearings.
- The judge ultimately found in her favor, but she should not have had to go through that.
- Senator French asked if this would take away the child's ability to receive inheritance from the father.
  - Doesn't have the legal expertise to answer that
- Two years ago NH passed legislation that allowed the court to have a fact finding hearing using the standard of reasonable doubt that would trigger a termination of rights. Prior to that a conviction was required to terminate parental rights.
- This is the logical next step.
- Senator Gannon asked if this applies to statutory rape.
  - This would include felony level statutory rape cases. The termination of parental rights statute is RSA 632-A:2-4. In NH the age of consent is 16 and those younger than 13 have no ability to consent to any sexual activity. In situations with a child under 13 that is an automatic felony. In the cases of a 13, 14, or 15 year old where it is not seen as forcible or non-consensual and the other person is five years older or less it is misdemeanor if it is only sexualized touching. If there is penetration and it is a four or more year age difference that is a felony level offense. These came about through research to determine when an adolescent is an actual cohort with another adolescent and when the age changes and it is a forcible type situation. This termination of parental rights statute already includes these forcible cases, however the court most also look towards what is deemed as in the best interest of the child.

**David Vicinanza (Attorney for Survivor)**

- Is the attorney for Kelly V who was 13 years old, living in Derry and was raped by an adult male.
- Two months later Kelly found out she was pregnant. She reported to a neighbor and the Derry police investigated.
- Kelly had the baby and the perpetrator was convicted.
- Kelly has finished her high school degree, is going to college, and has become an LNA.
- She wanted to be here today, but had to work.
- By the time Kelly was 17.5 years old the perpetrator was in prison and started writing her letters six months before his release that he was going to co-parent with her and that the best thing for the child would be for them to have a romantic relationship.
- A lot of the advantages Kelly had developed for herself were in peril, as she became depressed and anxious over the possibility of her rapist gaining parental rights.
- The law does not make any exceptions for burden of proof in cases of rape.

- In these instances it must be proven that the qualifying event of the sexual assault occurred and resulted in a child. This bill does not touch that aspect of the law.
- Currently however, it is necessary that the victim prove it is in the best interest of the child that the perpetrator not be given parental rights.
- Filed a motion on this in November 2015 and they had hearings in January, March, and two in May. At all of those hearings the perpetrator showed up.
- The final hearing was set in September and the perpetrator did not show up. They moved to default him, but the judge ruled against them because the burden is on the victim to prove the case.
- Right before having to testify, Kelly had a stressed induced seizure and the hearing was suspended.
- Two months later, in November, they had the hearing again, but got a letter from Kelly's doctor that she shouldn't have to testify.
- The judge excused her from testifying, but required evidence from witnesses and an expert.
- Eventually, the judge did find in favor of Kelly, but she should have never had to experience this.
- This legislation says that once it is proven beyond a reasonable doubt that the perpetrator sexually assaulted the mother and the child resulted, the constitutional requirements have been met. Then, the burden of proof is born by the father for him to continue a relationship with the child.
- If this law had been in place during Kelly's trial, they would have been able to default the perpetrator when he did not show up at the hearing.
- Has a similar case in Franklin where a 14 year old girl had her parents putting her out to make money. This girl conceived and wanted to keep the baby, but the tow truck driver who assaulted her still has rights to the child. He is in jail in West Virginia, but they still need to prove it is in the best interest of the child to terminate the parent-child relationship and cannot default him.
- Senator French asked if this bill would cover statutory rape
  - There are two forms of statutory rape. One, is when the age difference is four or more years and that is covered by this.
- Senator French asked if sex between two 15 year olds not be considered statutory rape.
  - Does not think so in this case, but thinks it would be wise to look further into that. Does not think the misdemeanor level where the age difference is less than four years would qualify, only in felony level statutory rape. This bill really just moves the burden of proof to the individual who has already violated the law.
  - In terms of the inheritance question, the statute already allows for the termination of parental rights while still allowing for support to be required. Would assume the rights are only terminated for custody and decision making over the child's life.
- Senator French asked if there is anything in statute that prevents a convicted felon from reaching out to their victim.
  - Most judges put a restriction on that in the sentencing order. For Kelly's case that was not done for some reason. Does not think a freestanding prohibition exists.
- Senator Hennessey asked if the age difference is less than four years is it a misdemeanor.

- Yes, but only if it is factually consensual but not legally consensual. If the age difference is more than 4 years it is automatically a felony.

**Summary of testimony presented in opposition :** N/A

**Future Action:** Pending

JCH  
Date Hearing Report completed: February 2, 2017