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The High Cost of Child Support in Rape Cases: Finding an Evidentiary Standard To Protect Mother and Child from Welfare's Cooperation Requirement

Aviva Nusbaum

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THE HIGH COST OF CHILD SUPPORT IN RAPE CASES: FINDING AN EVIDENTIARY STANDARD TO PROTECT MOTHER AND CHILD FROM WELFARE'S COOPERATION REQUIREMENT

*Aviva Nusbaum**

Indigent single parents who turn to welfare for financial support must cooperate with their state's child support enforcement requirements before receiving some or all of their benefits. Single parents are required to provide information about the absent parent because states use the information to pursue the absent parent for child support. While child support helps reduce poverty and increase parental emotional support for children, it can also be very dangerous for some single mothers. The good cause exception exempts parents from child support enforcement when it would be contrary to the "best interests of the child." Mothers and children who would be physically endangered by contact with the absent father can therefore demonstrate good cause by proving dangerous circumstances, such as those where the child was conceived through rape. But evidentiary standards requiring official or third-party corroboration to satisfy good cause can impose a heavy burden on women who gave birth to a child conceived during rape. Rape is overwhelmingly unreported, and women often hide their rape from friends and family for fear of social stigma. This makes the third-party corroboration requirement more burdensome for rape victims.

Evidentiary standards to satisfy good cause vary by state. All states accept official documentation, often in the form of records from birth certificates and documentation from medical professionals or law enforcement. The majority of states provide that sworn statements of third parties with knowledge of the circumstances leading to good cause may substantiate the claim. A minority of states, however, articulate polarized approaches, outlining either a more achievable "permissive" approach, or requiring more demanding "restrictive" standards. The minority permissive approach allows for both third-party statements and applicant corroboration, while the minority restrictive approach will not accept

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anything other than official documentation. This Note argues that states must craft evidentiary requirements that are compatible with victim behavior following sexual assault to properly protect rape victims seeking welfare benefits from the danger of continued contact with their rapist through child support enforcement. The majority and minority restrictive approaches are too limited, as they require the rape victim to have reported or disclosed her rape in order to receive benefits, despite the realities of victim behavior.

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INTRODUCTION

One woman, raped on a first date, escaped her attacker in the middle of the night and later learned she was pregnant.¹ When the child was three, both the mother and child were homeless.² The mother filed for state benefits, and the welfare agency forced her to cooperate in its pursuit of the biological father for child support. Otherwise, she risked losing financial assistance in her dire condition.³ The child support order notified the rapist that he had a child and provided him with the contact information of his victim.⁴ He found her and wanted custody of her child.⁵

In the majority of states, a rapist who seeks parental rights over a child conceived during rape will be awarded custody or visitation, in spite of the detrimental effect on both mother and child.⁶ Often, these rapists first

1. See Telephone Interview with Juda Myers, Founder, Choices4Life (Dec. 26, 2012) (on file with *Fordham Law Review*).

2. See *id.*

3. See *id.*

4. See *id.*

5. See *id.* Although this man could have gained parental rights over the child had he filed paperwork, Choices4Life protected the woman and secretly helped her relocate to another state where she could not be found. See *id.*

6. See generally Kara N. Bitar, Note, *The Parental Rights of Rapists*, 19 DUKE J. GENDER L. & POL’Y 275 (2012) (examining the dangerous predicament women who have been raped face when they choose to keep their rape-conceived children and advocating for legislation that heightens the protection afforded to women in these cases); Shauna R. Prewitt, Note, *Giving Birth to a “Rapist’s Child”: A Discussion and Analysis of the Limited Legal Protections Afforded to Women Who Become Mothers Through Rape*, 98 GEO. L.J. 827 (2010) (contending that sufficient legal protection has not been passed because invidious societal stereotypes stymie appropriate remedies).

discover they have a biological child and learn the contact information of their victim through the welfare system.⁷

One in five American women have been raped or sexually assaulted,⁸ suggesting that 1.3 million women are victims of rape or attempted rape each year.⁹ In the majority of these cases,¹⁰ an intimate partner had raped the victim, and, another 40 percent of the time, the perpetrator was an acquaintance of the victim.¹¹ Although rape occurs with alarming frequency, it is seriously underreported, as less than 20 percent of adult female victims report their attacks to the police.¹²

Among victims of reproductive age, pregnancy results from rape 5 percent of the time.¹³ Women who conceive from rape choose to have and raise the child over 30 percent of the time.¹⁴ If women cannot afford to raise the child on their own, they likely must turn to the welfare system for financial support.

Under current policy, all women applying for welfare must comply with certain requirements¹⁵ to help the state contact the biological father to collect child support.¹⁶ If a woman applying for assistance does not

7. See Telephone Interview with Juda Myers, *supra* note 1 (sharing personal experiences of clients and acquaintances whose rapist tracked them down after learning their contact information from welfare's child support enforcement). See generally JESSICA PEARSON & ESTHER ANN GRISWOLD, COLO. MODEL OFFICE PROJECT, CHILD SUPPORT POLICIES AND DOMESTIC VIOLENCE: A PRELIMINARY LOOK AT CLIENT EXPERIENCES WITH GOOD CAUSE EXEMPTIONS TO CHILD SUPPORT COOPERATION REQUIREMENTS 3 (1997).

8. Roni Caryn Rabin, *Nearly 1 in 5 Women in U.S. Survey Say They Have Been Sexually Assaulted*, N.Y. TIMES, Dec. 11, 2011, at A32.

9. See *id.*

10. The National Violence Against Women Survey suggested even higher numbers for intimate partner violence, reporting that 64 percent of adult women who reported being raped or assaulted had been victimized by a husband, boyfriend, or date. See PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T OF JUSTICE, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 46 (2000). Additionally, approximately 16 percent of adult women were raped by an acquaintance, around 15 percent were raped by a stranger, and the remaining approximate 6 percent were victimized by a relative. See *id.*

11. See Rabin, *supra* note 8.

12. PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, NAT'L INST. OF JUSTICE, EXTENT, NATURE, AND CONSEQUENCES OF RAPE VICTIMIZATION: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 33 (2006), available at <https://www.ncjrs.gov/pdffiles1/nij/210346.pdf>.

13. See, e.g., Melissa M. Holmes et al., *Rape-Related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women*, 175 AM. J. OBSTETRICS & GYNECOLOGY 320, 320 (1996); Judith McFarlane, *Pregnancy Following Partner Rape: What We Know and What We Need To Know*, 8 TRAUMA, VIOLENCE & ABUSE 127, 130 (2007).

14. Holmes et al., *supra* note 13, at 320. There is evidence that 30 percent is even a low estimation, because there are many women raising children they conceived during rape who did not report. E-mail from Juda Myers, Founder, Choices4Life, to author (Nov. 3, 2013, 11:15 EST) (on file with *Fordham Law Review*).

15. Throughout, this Note uses the term "cooperation requirement" to indicate the requirement that a woman cooperate with establishing the identity and paternity of her child's father for support enforcement before she can receive assistance.

16. See 42 U.S.C. § 608(a)(2) (2006). The statute provides that the state agency administering financial assistance must ensure that the recipient of the government funds

comply, she will be sanctioned.¹⁷ This sanction can range from a 25 percent reduction in benefits to a complete denial of assistance, depending on state policy.¹⁸

Recognizing the possible dangers to mothers and children, Congress created a “good cause exception” to the cooperation requirement.¹⁹ Federal guidelines for the good cause exception dictate that welfare agencies should apply it when in “the best interests of the child,”²⁰ but the ultimate power resides in state agencies administering welfare programs, because they are given the authority to define the specifics of the good cause exceptions in their state.²¹

Although states include a provision permitting the exception in cases where the child was conceived through rape, the standards of proof required to show the child was conceived by rape do not have to be uniform from state to state.²² States have various standards that put differing levels of pressure on the benefits recipient to provide official records corroborating that her child was conceived through rape.²³ Additionally, all states look for documentation from medical practitioners or the police showing the victim took steps to report the crime.²⁴ This Note examines whether the various state standards of proof required for women to satisfy the good cause exception are reasonable, considering the realities of victim response following rape.

Part I of this Note explains the development of welfare law that led to child support requirements today and explores the policy and reactions surrounding the current welfare program. Part II explores statistics on rape, focusing on populations of women who conceived through rape and the difficulties and realities of rape reporting. Finally, Part III of this Note defines the state conflict, examines the patterns in good cause exception evidentiary requirements, and argues that the minority standard allowing for recipient corroboration should be adopted by states nationwide.

I. THE HISTORY: THE EVOLUTION OF WELFARE LAW, CHILD SUPPORT COOPERATION REQUIREMENTS, AND THE GOOD CAUSE EXCEPTION

Welfare policy has evolved since child support enforcement was established. While the impact of current policy on family-structure incentives and child-support cooperation on rape victims and their children

cooperates in “establishing paternity or in establishing, modifying, or enforcing a support order with respect to a child of the [recipient].” *Id.*

17. *See id.* § 608(a).

18. *See id.*

19. *See id.* § 654(29)(A).

20. *See id.* § 654(29)(A)(i).

21. *See id.*

22. *See* Jacqueline M. Fontana, *Cooperation and Good Cause: Greater Sanctions and the Failure To Account for Domestic Violence*, 15 WIS. WOMEN’S L.J. 367, 375 (2000); Anne Marie Smith, *The Sexual Regulation Dimension of Contemporary Welfare Law: A Fifty State Overview*, 8 MICH. J. GENDER & L. 121, 157 (2002).

23. *See infra* Part III; *see also* Fontana, *supra* note 22, at 375.

24. *See id.*

have been mitigated by the good cause exception, states can limit access to that exception with their discretion to prescribe evidentiary burdens. This Part first introduces the welfare system and discusses the prior benefits program assigning child support and designing good cause exception requirements. Next, this Part explains the shift to current policy and examines child support measures under this framework. Finally, this Part discusses the current state approaches to evidentiary burdens.

A. *History of U.S. Welfare Law*

The welfare system in the United States is designed to embrace two goals.²⁵ First, through regulations and taxes, the welfare state aims to prevent poverty.²⁶ Second, by implementing social services, the government aspires to manage poverty's effects.²⁷ Although family cash benefit programs and similar expenditures only draw from a small percentage of the program budget, it has historically elicited a large amount of debate and attention.²⁸

1. The 1935 Social Security Act and the Aid to Families with Dependent Children Program

Title IV of the Social Security Act of 1935 established the Aid to Families with Dependent Children (AFDC) program.²⁹ Created during the Great Depression, the federal government endeavored to help poor children remain with their families and in their homes, instead of in orphanages and similar public establishments.³⁰ AFDC was a cash-based assistance program to aid needy children who lacked parental support because a parent was absent, unemployed, incapacitated, or deceased.³¹ To help these families survive, AFDC provided open-ended funding to replace job income³² and gave states unlimited funding to assist all eligible families.³³

25. See WILLIAM M. EPSTEIN, *WELFARE IN AMERICA: HOW SOCIAL SCIENCE FAILS THE POOR* 22 (1997) (discussing the political controversy surrounding poverty and dependency).

26. See *id.*

27. See *id.*

28. See *id.* at 22–23. Though “welfare” is typically associated with the cash benefit program, in reality it is “only a tiny portion of a vast array of federal government social welfare programs designed to fight poverty.” MICHAEL TANNER, *CATO INST., THE AMERICAN WELFARE STATE: HOW WE SPEND NEARLY \$1 TRILLION A YEAR FIGHTING POVERTY—AND FAIL* 2 (2012).

29. See Megan C. Martin, *Welfare Reform in the U.S.: A Policy Overview Analysis*, 3 *POVERTY & PUB. POL’Y* 1, 10 (2011); Linda Gordon & Felice Batlan, *The Legal History of Aid to Dependent Children Program*, SOC. WELFARE HIST. PROJECT, <http://www.socialwelfarehistory.com/programs/aid-to-dependent-children-the-legal-history/> (last visited Nov. 22, 2013).

30. HELEN HERSHKOFF & STEPHEN LOFFREDO, *THE RIGHTS OF THE POOR: THE AUTHORITATIVE ACLU GUIDE TO POOR PEOPLE’S RIGHTS* 5 (1997).

31. See Eugene M. Lewit, Donna L. Terman & Richard E. Behrman, *Children and Poverty: Analysis and Recommendations*, 7 *CHILD. & POVERTY* 4, 9 (1997), available at http://www.princeton.edu/futureofchildren/publications/docs/07_02_Analysis.pdf; Martin, *supra* note 29, at 10.

32. See Martin, *supra* note 29, at 11.

33. See *id.* at 13.

The Federal Department of Health and Human Services (HHS) was responsible for designing regulations to be implemented under AFDC, though the program was still administered at the local level.³⁴ Despite state application, the federal government funded up to 80 percent of the program's expenses.³⁵ At AFDC's peak, more than 5 million families received benefits, and one in seven children belonged to a participant household.³⁶

Eligibility requirements were less strict than they are under current law;³⁷ today, in contrast, minors, single mothers, legal immigrants,³⁸ those "convicted of drug-related crimes," and families of any size receive unrestricted, indefinite benefits.³⁹ Yet even so, aid under the program was only available to very low-income families, and if a family received additional financial assistance from other sources, their level of welfare support shrunk.⁴⁰

The federal government provided states some freedom to adjust eligibility prerequisites to AFDC.⁴¹ However, federal laws checked the scope of state autonomy by prohibiting the exclusion of certain families.⁴² In contrast, the federal government did not restrain the freedom of states in determining the amount of money an eligible family must receive to satisfy their basic needs each month.⁴³ Therefore, state agencies set their own standards, and many families received income benefits that left them still struggling significantly below the federal poverty level.⁴⁴

34. See HERSHKOFF & LOFFREDO, *supra* note 30, at 4.

35. *See id.*

36. *See id.* at 5.

37. The AFDC eligibility requirements stipulated that the needy family "(1) have at least one child; (2) have a caretaker relative living in the same house as the child; and (3) the child must be 'deprived of parental support or care.'" *See id.* at 6. The "caretaker relative" specified someone that lived with and cared for the child, but did not have to be a biological parent or legal guardian. *See id.* at 6–7. Rather the caretaker's relation to the child could be through blood, marriage, or adoption, as long as a particular level of kinship existed. *See id.*

38. Under current law, eligibility of immigrants to public benefits is significantly restricted, even though aliens such as those admitted for permanent residence were explicitly covered under the AFDC. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, §§ 400–412, 110 Stat. 2105; HERSHKOFF & LOFFREDO, *supra* note 30, at 9–10. The ban on noncitizen assistance is subject to certain exceptions, such as the allowance of limited eligibility for qualified aliens, including those who arrived seeking asylum and those who were granted refugee status. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996 §§ 400–412, 110 Stat at 2105.

39. *See* Martin, *supra* note 29, at 15.

40. *See* Maria Cancian et al., *Welfare and Child Support: Complements, Not Substitutes*, 27 J. POL'Y ANALYSIS & MGMT. 354, 355 (2008).

41. *See* HERSHKOFF & LOFFREDO, *supra* note 30, at 11.

42. *Id.* For example, a state agency could not require that a family live in state for a specified time before being eligible for benefits, and they could not deny a family's eligibility if the unmarried mother was in a sexual relationship with a man. *Id.*; *see* King v. Smith, 392 U.S. 309, 333–34 (1968) (invalidating Alabama's "substitute father" regulation, which denied a family benefits if a man often visited the mother's home, even if he did not provide support for the child).

43. *See* HERSHKOFF & LOFFREDO, *supra* note 30, at 15.

44. *See id.* at 14–15.

2. The 1975 Social Security Act and the Child Support Enforcement and Paternity Establishment Program

In the early 1970s, Congress realized that the majority of needy children required assistance not because a parent was deceased, but because their parents had split up or never married.⁴⁵ The Child Support Enforcement and Paternity Establishment program (CSE), passed in 1975, required ongoing financial support from noncustodial parents to relieve children from relying on welfare and reduce public expenses.⁴⁶ This legislation was introduced as part D under Title IV of the Social Security Act (IV-D), directing child support agencies to establish paternity and enforce child support collection from noncustodial parents.⁴⁷

When IV-D passed, families receiving AFDC support were required to participate in the government's support program as a condition for continued assistance.⁴⁸ If child support was already owed to a family, but the payment was outstanding, the family was obligated to give the support rights to the government.⁴⁹ If a child support order had not yet been obtained, the applicant was required to cooperate with the government in establishing an order.⁵⁰

In general, the child support money collected did not go to the families.⁵¹ State and federal governments retained any funds over fifty dollars per month collected from the absent parent as reimbursement for their assistance.⁵² Thus, collections on behalf of the welfare participants were used predominantly to compensate the government for its administrative expenses.⁵³ Since the child support payment mostly did not benefit the recipients, the families effectively received the same overall income irrespective of whether or not the noncustodial parent paid child support.⁵⁴

45. STAFF OF H.R. COMM. ON WAYS & MEANS, 105TH CONG., 1998 GREEN BOOK: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 546 (Comm. Print 1998), available at <http://www.gpo.gov/fdsys/pkg/GPO-CPRT-105WPRT37945/pdf/GPO-CPRT-105WPRT37945-2-8.pdf>.

46. *See id.*

47. An Act To Amend the Social Security Act To Establish Consolidated Program of Federal Financial Assistance To Encourage Provision of Services by the States, Pub. L. No. 93-647, 88 Stat. 2337 (1974).

48. *See* VICKI TURETSKY & ANDREA WATSON, CTR. FOR LAW & SOCIAL POLICY, CHILD SUPPORT CASELOAD DATA: RECENT TRENDS, at ii (1998). Child support for custodial parents who are not receiving welfare benefits is voluntary. *See* Deborah Harris, *Child Support for Welfare Families: Family Policy Trapped in Its Own Rhetoric*, 16 N.Y.U. REV. L. & SOC. CHANGE 619, 621 (1988). The nonwelfare parent can independently decide if seeking child support will ultimately be beneficial or harmful to both parent and child. *See id.*

49. *See* Cancian et al., *supra* note 40, at 355.

50. *See id.*

51. *See id.*

52. *See id.*

53. *See id.*

54. *See id.*

Child support cooperation requirements can be invasive.⁵⁵ Where paternity is not established, the mother must identify the child's father and disclose personal details of her sexual history to various personnel.⁵⁶ Both the mother and child are blood tested.⁵⁷ Once paternity is recognized, the mother is required to appear at support proceedings against the father, often to testify.⁵⁸ If any cooperation requirement is not satisfactorily met, welfare officials withhold a percentage of the mother's benefits as sanctions.⁵⁹

3. Birth of the Good Cause Exception

Alongside child support enforcement and the cooperation requirement, Congress also provided an exception,⁶⁰ born because of the fear that the requirement would prompt some absent fathers to harm and physically endanger the custodial mother and the child.⁶¹ This exemption maintained that single mothers need not aid the establishment of child support or paternity when doing so was contrary to the "best interests of the child."⁶² Until 1996, HHS provided a regulation that specified circumstances where the exception would apply.⁶³

The federal specification maintained that welfare agencies should find good cause where an applicant's cooperation was "reasonably anticipated" to harm the child for whom assistance was sought, either physically or emotionally.⁶⁴ The regulation further provided that good cause existed when cooperation would compromise the parent or relative caring for the child for whom assistance was being sought, resulting in physical or emotional harm for the adult.⁶⁵ Finally, the regulation enumerated three circumstances where a custodial parent's cooperation would be harmful to the child.⁶⁶ Two of the situations contemplated protected ongoing adoption-related deliberations by a court or agency, and one anticipated

55. See IRWIN GARFINKEL, *ASSURING CHILD SUPPORT: AN EXTENSION OF SOCIAL SECURITY 66-67* (1992) (discussing how the applicant's privacy interests are impacted by paternity establishment); Harris, *supra* note 48, at 621.

56. See Harris, *supra* note 48, at 621.

57. See *id.*

58. See *id.*

59. See *id.*

60. See Amendments Relating to Social Security Act, Pub. L. No. 94-88, § 208, 89 Stat. 433, 436 (1975).

61. H.R. REP. NO. 94-368, at 3-5 (1975).

62. Amendments Relating to Social Security Act § 208, 80 Stat. at 436.

63. See Smith, *supra* note 22, at 156.

64. 45 C.F.R. § 232.42 (1996); see also Smith, *supra* note 22, at 156; Jill Davies, *The New Welfare Law 1, 7* (Jan. 1997) (unpublished manuscript), available at <http://www.mincava.umn.edu/documents/welpol3/welpol3.pdf>.

65. See, e.g., 45 C.F.R. § 232.42; Smith, *supra* note 22, at 156; Davies, *supra* note 64, at 7.

66. See 45 C.F.R. § 232.42(a)(2)(i); Davies, *supra* note 64, at 9. Federal regulations did not recognize good cause for any physical or emotional harm, unless it was determined that the harm impacted the woman's ability to care for her child. See 45 C.F.R. § 232.42(a)(1)(iii)-(iv).

requiring good cause where the child for whom assistance was sought was conceived “as a result of incest or forcible rape.”⁶⁷

States implemented the exemption to varying degrees.⁶⁸ While welfare agencies have a responsibility to notify recipients about the good cause exception,⁶⁹ the amount of good cause claims registered annually varied widely between states.⁷⁰ Some states even reported that no good cause claims were made at all.⁷¹ Additionally, some more populous states reported hearing and accepting fewer claims for good cause than some other less populous states.⁷²

B. Welfare Law Today: The Shift to the Personal Responsibility and Work Opportunity Reconciliation Act and the Temporary Assistance to Needy Families Program

In 1996, under the Clinton Administration, the United States significantly changed welfare policy by adopting the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).⁷³ This change replaced the cash-based assistance of AFDC with Temporary Assistance to Needy Families (TANF), a block grant program that focused on employment.⁷⁴ The TANF implementation imposed different eligibility, funding, and work requirements than those that were necessary under AFDC.⁷⁵

PRWORA was very controversial when it was passed.⁷⁶ While the congressional debates over welfare reform were extremely passionate, there were few differences, however, between the two proposals being advocated.⁷⁷ Both proposals restricted eligibility, required participants to work without a sufficient framework for helping them to secure jobs, enforced punitive sanctions on young mothers, and declined to raise benefits.⁷⁸ The policy behind the plans reflected a general frustration with

67. See 45 C.F.R. § 232.42; Davies, *supra* note 64, at 8.

68. See Harris, *supra* note 48, at 622 n.12.

69. 45 C.F.R. § 232.40(b).

70. See Harris, *supra* note 48, at 622 n.12.

71. See *id.*

72. See *id.*

73. See Martin, *supra* note 29, at 10.

74. See *id.* at 1; *About TANF*, OFF. FAM. ASSISTANCE, <http://www.acf.hhs.gov/programs/ofa/programs/tanf/about> (last visited Nov. 22, 2013).

75. See Martin, *supra* note 29, at 8.

76. See *id.* at 9. Senator Daniel Patrick Moynihan, a New York Democrat, criticized the reform’s dissolution of “the basic Federal commitment of support for dependent children in hopes of altering the behavior of their mothers.” *Excerpts from Debate in the Senate on the Welfare Measure*, N.Y. TIMES, Aug. 2, 1996, at A16 (“We are putting those children at risk with absolutely no evidence that this radical idea has even the slightest chance of success.”). Although welfare reform is now widely considered to be effective because there has been a remarkable decrease in welfare rolls, “judging the success of welfare reform solely by how many people leave welfare is a bit like judging the success of a hospital by how many people leave it, without differentiating between how many people leave it cured, ill, or dead.” Joel Berg, *Welfare Reform: The Promise Unfulfilled*, 11 J. GENDER RACE & JUST. 47, 47 (2007).

77. See EPSTEIN, *supra* note 25, at 38.

78. See *id.*

the federal government's power, the expanding lower class's continued dependency, and the nuclear family's deteriorating prominence.⁷⁹

1. Goals of the New Legislation

Although ultimately the AFDC's goal of reducing poverty by supporting low-income families still remained central, the programs and strategies implemented to accomplish that end transformed significantly.⁸⁰ While the AFDC had guaranteed federal support to the most needy children, TANF's block grants gutted federal responsibility and delegated money to the states so local agencies could institute programs that would provide temporary assistance to help poor families return to the workforce and support themselves.⁸¹ TANF policy retreated from the AFDC's entitlement programs with its emphasis on work, time constraints, and sanctions against states and individuals that did not meet work requirements.⁸²

To implement TANF, the states were instructed to put the block grants towards any of the federal law's four policy goals.⁸³ Those stated objectives were to: (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) encourage the formation and maintenance of two-parent families.⁸⁴ The HHS is authorized to deduct funds from a state's block grant if that state does not comply with TANF conditions.⁸⁵

Work objectives instituted under TANF required that eligible adults must participate in employment after twenty-four months of assistance and set a five-year cap on available funding over a person's lifetime.⁸⁶ The government applied these restrictions in the hope that they would encourage recipients to participate in employment as soon as they were able to join the workforce.⁸⁷

79. *See id.*

80. *See* Martin, *supra* note 29, at 9.

81. *See* HERSHKOFF & LOFFREDO, *supra* note 30, at 32–33.

82. RON HASKINS, *WORK OVER WELFARE: THE INSIDE STORY OF THE 1996 WELFARE REFORM LAW 333* (2006); *see* Candice Hoke, *State Discretion Under New Federal Welfare Legislation: Illusion, Reality and a Federalism-Based Constitutional Challenge*, 9 STAN. L. & POL'Y REV. 115, 116 (1998).

83. *See* Martin, *supra* note 29, at 11.

84. *About TANF*, *supra* note 74; Martin, *supra* note 29, at 11.

85. *See Q & A: Penalty Process*, OFF. FAM. ASSISTANCE, <http://www.acf.hhs.gov/programs/ofa/resource/q-a-penalty-process> (last visited Nov. 22, 2013);

86. Roberta Rehner Iversen, *TANF Policy Implementation: The Invisible Barrier*, 27 J. SOC. & SOC. WELFARE 139, 139–40 (2000).

87. *See generally* HEATHER HAHN, DAVID KASSABIAN & SHIELA ZEDLEWSKI, OFFICE OF PLANNING, RESEARCH & EVALUATION, *TANF WORK REQUIREMENTS AND STATE STRATEGIES TO FULFILL THEM* (2012), *available at* http://www.acf.hhs.gov/sites/default/files/opre/work_requirements_0.pdf.

The government also endeavored to impact family structure, encouraging nuclear families and family planning to increase economic stability.⁸⁸ Since births out of wedlock increased welfare reliance under the AFDC,⁸⁹ reduction of nonmarital pregnancies was a central aim of TANF.⁹⁰ States could qualify for additional funds if they could demonstrate the largest reductions in births out of wedlock and abortions.⁹¹ Additionally, welfare reform cut back on benefits for unmarried adolescents who gave birth, as a disincentive.⁹²

2. Allocation to the States

After PRWORA passed, an apprehensive public expressed concern that “states can now do almost anything they want.”⁹³ This apprehension was founded on PRWORA’s initiatives that allow states to make a multitude of choices for their programs, in place of traditional welfare procedures.⁹⁴ The federal government no longer provides a “cash assistance safety net for children,” instead delegating responsibility for assisting indigent families to the states.⁹⁵ The federal legislation stated goals and then designated the states to use their grants in a manner “reasonably calculated” to achieve the government’s objectives.⁹⁶

According to this prevailing opinion of welfare reform after the legislation passed, the system was deficient because the federal government set a limit on the amount of money designated for welfare spending, providing the responsibility over programming measures to the states through block grants, and allowing the states to structure and implement them at their discretion.⁹⁷ However, the federal government did not provide unlimited latitude; many fundamental policy directives were already established, leaving only their implementation and marginal measures for the states.⁹⁸ Nonetheless, certain provisions of PRWORA accord the states more freedom than others.⁹⁹

88. See Martin, *supra* note 29, at 11.

89. See EPSTEIN, *supra* note 25, at 111.

90. See Mark Greenberg, *Welfare Restructuring and Working-Poor Family Policy*, in *HARD LABOR: WOMEN AND WORK IN THE POST-WELFARE ERA* 32 (Joel F. Handler & Lucie White eds., 1999).

91. See *id.*

92. See EPSTEIN, *supra* note 25, at 130.

93. Peter Edelman, *The Worst Thing Bill Clinton Has Done*, *ATLANTIC MONTHLY*, Mar. 1997, at 43, 49; see Hoke, *supra* note 82, at 115.

94. See Hoke, *supra* note 82, at 115.

95. Peter K. Legler, *The Coming Revolution in Child Support Policy: Implications of the 1996 Welfare Act*, 30 *FAM. L.Q.* 519, 519 (1996).

96. See Greenberg, *supra* note 90, at 31.

97. See Hoke, *supra* note 82, at 116.

98. See *id.* at 115.

99. See *id.* at 116.

3. Impact on Child Support Cooperation

In 1993, President William Clinton appointed the Working Group on Welfare Reform, Family Support, and Independence to design a new welfare plan, including enforcement of child support.¹⁰⁰ This group met with child support agency administrators and advocates, believing that it was important to incorporate support components in the new reform for single-parent families extrinsic to the welfare system.¹⁰¹ Following the 1994 congressional election, Congress tried to make changes to the child support provisions.¹⁰² However, there was strong opposition to modifications, and the child support provisions were incorporated into PRWORA.¹⁰³

Title III of PRWORA specifies that the child support cooperation requirement is a necessary condition for state eligibility in maintaining the state's complete grant under TANF.¹⁰⁴ Title III created a system focused on establishing support, including a registry of outstanding support orders and mechanisms for expeditious support enforcement.¹⁰⁵ Additionally, Title III enacted laws, such as the Uniform Interstate Family Support Act, and assigned statewide jurisdiction for courts and agencies adjudicating support proceedings.¹⁰⁶

Under PRWORA, recipients of TANF are required to cooperate with identifying absent parents for support enforcement, and states are directed to subtract the minimum of 25 percent from assistance funds or deny a family full eligibility if a recipient does not comply.¹⁰⁷ All states that do not institute these sanctions will have 5 percent of their grant withheld by the federal government for the following fiscal year.¹⁰⁸ The federal government has incentive to ensure that the states are fulfilling the terms of the Act, because they receive reimbursement priority for the money collected from the support orders.¹⁰⁹ After the federal government has been refunded, the states are given the remainder of the money for their own use, or the money is returned to the assisted family.¹¹⁰

100. *Child Support Enforcement Incentive Funding: Report to the House of Representatives Committee on Ways and Means and the Senate Committee on Finance*, OFF. CHILD SUPPORT ENFORCEMENT (Feb. 1, 1997), <http://www.acf.hhs.gov/programs/css/resource/child-support-incentive-funding>; see also Legler, *supra* note 95, at 524.

101. See Legler, *supra* note 95, at 524.

102. See *id.* at 526–27.

103. See *id.* at 527 n.45.

104. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, §§ 400–412, 110 Stat. 2105, 2198–2260; see Hoke, *supra* note 82, at 117.

105. See 42 U.S.C. § 666 (2006); Hoke, *supra* note 82, at 117.

106. 42 U.S.C. § 666(f); see Hoke, *supra* note 82, at 117.

107. 42 U.S.C. § 608(a)(2)(A)–(B); see Hoke, *supra* note 82, at 117.

108. 42 U.S.C. § 609(a)(1)(B); Hoke, *supra* note 82, at 117.

109. See Hoke, *supra* note 82, at 117.

110. 42 U.S.C. § 657(a)(1). States have discretion over whether money returned to the family is included in TANF eligibility and grant amount assessments. See Paula Roberts, *Child Support Distribution and Disbursement*, CENTER FOR L. & SOC. POL'Y 2 (Oct. 1, 2000), <http://www.clasp.org/admin/site/publications/files/0068.pdf>. PRWORA repealed the federal requirement that fifty dollars of child support collected each month could be given to

a. *The Importance of Child Support Enforcement*

Experts agree that reducing poverty for children of single-parent families requires a comprehensive strategy.¹¹¹ An important element of that plan includes increased funding from child support enforcement.¹¹² Measured by this metric, the child support system has had successes.¹¹³ The percentage of women eligible for child support who receive annual payment has increased, regardless of the women's marital status.¹¹⁴ Further, the Office of Child Support Enforcement reported, even before welfare reform, that child support was cost effective; every dollar spent in enforcement yielded almost a four-dollar collection of child support.¹¹⁵

Regardless of the budgetary benefit child support enforcement provides to the welfare program, many agree that child support should be a focus of social policy because children have a right to parental support.¹¹⁶ Supporters of child support enforcement believe that the government should not have to step into a parent's shoes when it can assume the more pragmatic role of fostering a parent's proper efforts to uphold their support responsibilities.¹¹⁷ Under this theory, the goal of child support is to assist parents until they no longer need welfare to support their children.¹¹⁸

The federal government and the Office of Child Support Enforcement are committed to securing both financial and emotional support for children in single-family homes.¹¹⁹ Impoverished children often do not have the support of both parents, and having an absent parent has been correlated to an increased likelihood of emotional and behavioral issues.¹²⁰ Custodial parents often must contend with significant financial difficulty after a divorce, while noncustodial parents experience increased financial

the family directly, and that money would not be included in determining the family's eligibility, or calculating their grant allotment. *See id.* at 2 n.2.

111. *See, e.g.*, ABA PRESIDENTIAL WORKING GRP. ON THE UNMET LEGAL NEEDS OF CHILDREN AND THEIR FAMILIES, AMERICA'S CHILDREN AT RISK: A NATIONAL AGENDA FOR LEGAL ACTION 69-72 (1993); DAVID T. ELLWOOD, POOR SUPPORT: POVERTY IN THE AMERICAN FAMILY (1988); Robert Greenstein, *Reducing Poverty, in* CHANGING AMERICA: BLUEPRINTS FOR THE NEW ADMINISTRATION (Mark Green ed., 1992); NAT'L COMM'N ON CHILDREN, BEYOND RHETORIC: A NEW AMERICAN AGENDA FOR CHILDREN AND FAMILIES (1991).

112. *See, e.g.*, ABA PRESIDENTIAL WORKING GRP. ON THE UNMET LEGAL NEEDS OF CHILDREN AND THEIR FAMILIES, *supra* note 111, at 69-72; ELLWOOD, *supra* note 111; Greenstein, *supra* note 111; NAT'L COMM'N ON CHILDREN, *supra* note 111.

113. *See* Legler, *supra* note 95, at 522.

114. *See id.* at 522-23 & n.19.

115. OFFICE OF CHILD SUPPORT ENFORCEMENT, U.S. DEP'T OF HEALTH AND HUMAN SERVS., NINETEENTH ANNUAL REPORT TO CONGRESS (1994).

116. *See Child Support Enforcement Provisions Included in Personal Responsibility Act As Part of the CWA: Hearings Before the Subcomm. on Human Resources of the H. Comm. on Ways and Means*, 104th Cong. 31 (1995) (statement of David Ellwood, Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services).

117. *See id.*

118. *See id.*

119. Janet Atkinson & Susan F. Paikin, *The Federal Parent Locator Service: A Powerful Discovery Tool*, 17 DEL. LAW. 35, 35 (1999).

120. *See id.* at 35.

security.¹²¹ A noncustodial parent may often fail to maintain a relationship with their children.¹²²

b. Problems with Child Support Enforcement

Enforcing a support order can, however, present problems for both the collection agency and the benefits recipient.¹²³ When the absent parent lives in state, enforcing a support order is a demanding task, but when an absent parent lives out of state, the difficulties may be prohibitive.¹²⁴ Although the absent parent lives out of state in more than one-third of support cases, those cases only provide around 8 percent of the total support funds collected.¹²⁵ When the absent parent is not easily accessible, the full process of establishing the support order and enforcing collection can be extremely difficult, time consuming, and ultimately, not cost effective.¹²⁶

Pursuing child support can also be harmful for the recipient.¹²⁷ Child support actions may endanger the recipient because they notify the absent parent of the custodial parent's location.¹²⁸ In cases where the absent parent has raped or domestically abused the recipient, the absent parent can use the information he receives from the child support agency to violently pursue the victim.¹²⁹ Many victims of sexual violence hide from their abusers, and child support orders and proceedings necessarily renew contact between rapist and victim.¹³⁰ Advocates have recognized that a dangerous absent parent may react to the child support notification by renewed violence or by asserting rights to custody and visitation, which would seriously harm the mother and child.¹³¹

4. Impact on the Good Cause Exception

The good cause exception was created to protect women and children who would be endangered by fostering any type of contact with the absent parent.¹³² Setting out a template for interpreting the "best interests of the child" standard, the HHS embraced a definition that considered possible physical or emotional harm to both the child for whom support was sought

121. See Janelle T. Calhoun, Comment, *Interstate Child Support Enforcement System: Juggernaut of Bureaucracy*, 46 *MERCER L. REV.* 921, 922 (1995).

122. See Atkinson & Paikin, *supra* note 119, at 35.

123. *See id.*

124. *See id.*

125. *See id.*

126. *See id.*

127. See PEARSON & GRISWOLD, *supra* note 7, at 3.

128. See, e.g., PEARSON & GRISWOLD, *supra* note 7, at 3; Shelby A.D. Moore, *Understanding the Connection Between Domestic Violence, Crime, and Poverty: How Welfare Reform May Keep Battered Women from Leaving Abusive Relationships*, 12 *TEX. J. WOMEN & L.* 451, 477 (2003).

129. See PEARSON & GRISWOLD, *supra* note 7, at 3.

130. *See id.*; Telephone Interview with Juda Myers, *supra* note 1.

131. See PEARSON & GRISWOLD, *supra* note 7, at 3; Telephone Interview with Juda Myers, *supra* note 1.

132. *See supra* Part I.A.2.a.

and to the child's parent or relative caregiver.¹³³ Further, the definition included a provision specifying that good cause was satisfied if the child for whom assistance was sought had been conceived from incest or nonstatutory rape.¹³⁴

The federal regulation also included other factors to consider.¹³⁵ First, it narrowed the scope by defining reasonably anticipated harm as an "impairment that substantially affects the individual's functioning."¹³⁶ Second, it required state agencies to weigh other considerations, including the emotional condition and history of the recipient, the severity and duration of the expected impairment, and the level of involvement and cooperation that would be necessary in assisting to identify the absent parent and enforce a support order.¹³⁷

The good cause exemption, when it was established, provided women with formal means to obtain child-support assistance without having to involve or contact their attacker.¹³⁸ PRWORA, however, weakened this protection¹³⁹ by granting states the power to adopt their own good cause exceptions and independently define "the best interests of the child."¹⁴⁰ One year after PRWORA passed, Congress rescinded the federal regulation defining the good cause exception to the cooperation requirement because states were newly authorized to enact good cause standards of their own.¹⁴¹

* * *

States also now have the autonomy to determine the evidentiary criteria required for woman to show that her circumstances merit a good cause exception.¹⁴² Some states require official documentation,¹⁴³ some allow for third-party statements,¹⁴⁴ and other states accept affirmation from the recipient alone.¹⁴⁵ The state can decide whether the child support agency, welfare agency, or medical agency will make the determination of whether a recipient has sufficient evidence to satisfy the good cause claim.¹⁴⁶

133. See 45 C.F.R. § 232.42 (2013); Smith, *supra* note 22, at 156; Davies, *supra* note 64, at 7.

134. See 45 C.F.R. § 232.42; Smith, *supra* note 22, at 156; Davies, *supra* note 64, at 7.

135. See Smith, *supra* note 22, at 156.

136. 45 C.F.R. § 232.42(b); Smith, *supra* note 22, at 156.

137. See 45 C.F.R. § 232.42; Smith, *supra* note 22, at 156–57.

138. See Smith, *supra* note 22, at 157.

139. See *id.*

140. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 333, 110 Stat. 2105, 2231; see also Smith, *supra* note 22, at 157. The federal guidelines for providing exemptions were vague, and therefore states had the ability to render any safeguards they believed were "in the best interest of the minor child." Personal Responsibility and Work Opportunity Reconciliation Act of 1996 § 331; see Smith, *supra* note 22, at 157.

141. See 62 Fed. Reg. 64,301 (Dec. 5, 1997); Smith, *supra* note 22, at 157.

142. See Fontana, *supra* note 22, at 375.

143. See *infra* Part III.A–C.

144. See *infra* Part III.A–B.

145. See *infra* Part III.B; see also Fontana, *supra* note 22, at 375.

146. See 42 U.S.C. § 654(29)(A)(i) (2006); 45 C.F.R. § 264.30(b) (2013); Fontana, *supra* note 22, at 375 n.77.

Several scholars argue that the state evidentiary requirements must be reassessed.¹⁴⁷ Issues of information and material documentation may make meeting the evidentiary burden prohibitively difficult.¹⁴⁸ While some states are concerned that less restrictive standards would greatly increase the assertion of good cause claims, others that have lowered their evidentiary burdens have not experienced such an increase.¹⁴⁹

Additional problems with the evidentiary requirements surround the way that they are administered.¹⁵⁰ Often, agency officials do not abide by procedures that require them to inform women that the good cause exception exists.¹⁵¹ Additionally, the inconsistency of the evidentiary standards makes claims harder to corroborate.¹⁵² Finally, there are concerns that even when the good cause evidentiary burden was met, child support was still pursued.¹⁵³

II. THE VICTIM'S STRUGGLE: A SOCIOLOGICAL EXAMINATION OF RAPE, RESPONSE, AND PERPETUATED TRAUMA

This Part examines the response of victims and society to rape and reporting. Specifically, rape is the most underreported crime because of the stigma and revictimization associated with confiding in others after trauma from rape. First, this Part examines statistics on rape and reporting, illustrating that the disheartening phenomenon stems from institutional and social reactions to rape victims. Further, it describes the factors that make women less inclined to report. Finally, this Part examines the psychological impact that rape and the continued interactions with one's rapist have on victims, specifically considering the problem of rapists seeking parental rights.

A. *The Problems with Rape Reporting*

This section looks closely at the data and trends of rape reporting. First, it discusses the extremely low incidence of reporting that is characteristic of rape crimes. Next, it notes that women forgo confiding in friends or family and reporting to the hospital or police because the societal stigma and repercussions for victims often intensifies the trauma and isolation.

147. See, e.g., PEARSON & GRISWOLD, *supra* note 7, at 4; Fontana, *supra* note 22, at 383.

148. See Fontana, *supra* note 22, at 383; see also PEARSON & GRISWOLD, *supra* note 7, at 4.

149. See Fontana, *supra* note 22, at 383.

150. See, e.g., *id.* at 370; Interview with Anonymous, Pub. Benefits Legal Advocate (Dec. 6, 2012) (on file with *Fordham Law Review*). Sometimes when the benefits recipient appears at a meeting with their welfare agency liaison for a good cause screening, they are only told they have a "special assessment appointment," but they are not told what to bring. *Id.* Unless they have a legal advocate, they may not know to bring hospital reports, police reports, or other official documentation. See *id.* If the benefits recipient then does not have enough official support with them, they may never have another chance to bring in the corroborating documents. See *id.*

151. See Fontana, *supra* note 22, at 370.

152. See *id.*

153. See *id.*

Further, it identifies populations that are even less likely to report than other victims, and it looks at the reasoning for this disparity. Finally, it discusses the existence of the false-reporting myth and observes that numerous sources demonstrate that victims of rape are no more likely to bring fabricated claims than are victims of other crimes.

1. Rape Is the Most Underreported Crime

Rape is consistently the most underreported violent crime.¹⁵⁴ Reports suggest that for every ten rapes committed, only between one and four are ever reported to authorities.¹⁵⁵ More specifically, only a sobering 16 percent of women report their victimization.¹⁵⁶ According to the Senate Judiciary Committee, this amounts to approximately 2 million unreported rapes each year.¹⁵⁷ Additionally, not only do individuals typically not report their rapes to the police, but they also often choose not to confide in anyone.¹⁵⁸ A survey on college and university campuses revealed that only 5 percent of rape victims pursued counseling, while 42 percent never disclosed their experience to anyone.¹⁵⁹

However, even these overwhelming numbers likely underestimate just how frequently rape occurs.¹⁶⁰ Since victims report so rarely and are cautious about admission in any context, studies and surveys on the issue are probably skewed as well.¹⁶¹ Additionally, many raped women will internally label their experience as something other than rape, or fail to name their experience, particularly when the attack does not conform to society's conventional image of rape.¹⁶² These considerations suggest that

154. See, e.g., DIANA E.H. RUSSELL & REBECCA M. BOLEN, *THE EPIDEMIC OF RAPE AND CHILD SEXUAL ABUSE IN THE UNITED STATES* 26–27 (2000); ROBIN WARSHAW, *I NEVER CALLED IT RAPE: THE MS. REPORT ON RECOGNIZING, FIGHTING AND SURVIVING DATE AND ACQUAINTANCE RAPE* 12 (1988) (noting that date or acquaintance rape “is the most underreported crime against a person”); see also Linda S. Williams, *The Classic Rape: When Do Victims Report?*, 31 *SOC. PROBS.* 459 (1984); Prewitt, *supra* note 6, at 837.

155. See Williams, *supra* note 154, at 459.

156. See, e.g., NAT'L VICTIM CTR. & NAT'L CRIME VICTIMS RESEARCH & TREATMENT CTR., *RAPE IN AMERICA: A REPORT TO THE NATION* 6 (1992) (reporting findings from *The National Women's Study*); RUSSELL & BOLEN, *supra* note 154, at 26 (analyzing *Rape in America: A Report to the Nation*, which was the first conducted nationally on the pervasiveness of rape).

157. See JULIA A. ALLISON & LAWRENCE S. WRIGHTSMAN, *RAPE: THE MISUNDERSTOOD CRIME* 8 (1993).

158. See *id.* at 6; Wendy Pollack, *Twice Victimized—Domestic Violence and Welfare “Reform,”* 30 *CLEARINGHOUSE REV.* 329, 333 (1996).

159. See ALLISON & WRIGHTSMAN, *supra* note 157, at 6. This same survey found that only 5 percent of these individuals reported the attack to the police. See *id.*

160. See *id.* at 5.

161. See *id.*; RUSSELL & BOLEN, *supra* note 154, at 26–27 (“Because rape is the most underreported violent crime in the United States, it poses a particular challenge to those who set out to measure its magnitude.”).

162. See ALLISON & WRIGHTSMAN, *supra* note 157, at 5; WARSHAW, *supra* note 154, at 26 (explaining that when a woman is raped by someone she knows, she often does not immediately process the attack as rape, because to do so “would be to recognize the extent to which her trust was violated and her ability to control her own life destroyed”); see also ANDREA MADEA & KATHLEEN THOMPSON, *AGAINST RAPE* 26 (1974) (“[T]he victim is likely

the incidence of rape may actually be more than ten times greater than projected.¹⁶³

The trend of victims deciding not to report their rape diverges from typical victim behavior when responding to serious crimes.¹⁶⁴ On average, victims of both violent and nonviolent crimes felt unsettled if they did not report the incident to the authorities.¹⁶⁵ However, this feeling of unease and discomfort from keeping the crime a secret usually does not outweigh a raped woman's motivation and fears for choosing not to report.¹⁶⁶

2. Why Women Do Not Report

This "vast hidden population of women" who make the decision not to report their rapes do so for a number of reasons.¹⁶⁷ Women may not report to avoid the unwanted media publicity,¹⁶⁸ notoriety of a prosecution, or possible retaliation by their rapist.¹⁶⁹ Further, women often fear the reactions of those around them.¹⁷⁰ They may be apprehensive about confiding in anyone because they feel humiliated and self-conscious, or they may fear rejection from their husband or significant other.¹⁷¹ Many worry that they will be blamed or criticized for the attack.¹⁷² Women may consider it too personal for discussion, or they may simply want to move on

to bury the attack in the back of her mind as a horrible, bewildering incident that she cannot cope with. And when she is asked, as we asked at rape conferences and on our questionnaires, 'Have you ever been raped?' she will answer, as so many women did, 'I don't know.'").

163. See ALLISON & WRIGHTSMAN, *supra* note 157, at 5.

164. See *id.* at 5–6.

165. See CHARLES W. DEAN & MARY DEBRUYN-KOPS, *THE CRIME AND CONSEQUENCES OF RAPE* 64 (1982).

166. See *id.*

167. Williams, *supra* note 154, at 459; see DEAN & DEBRUYN-KOPS, *supra* note 165, at 64–65 (noting that a rapist may coerce his victim to remain silent with "threats of a return visit").

168. See RUSSELL & BOLEN, *supra* note 154, at 26–27.

169. See Williams, *supra* note 154, at 459.

170. See LEE MADIGAN & NANCY C. GAMBLE, *THE SECOND RAPE: SOCIETY'S CONTINUED BETRAYAL OF THE VICTIM* 5–6 (1989) ("The 'second rape' is the act of violation, alienation, and disparagement a survivor receives when she turns to others for help and support Keeping the rape a secret will prevent the second rape from occurring."); RUSSELL & BOLEN, *supra* note 154, at 26–27 ("All of these concerns reveal rape survivors' well-grounded fear that they will be stigmatized for having been raped."); see also Williams, *supra* note 154, at 4.

171. See DEAN & DEBRUYN-KOPS, *supra* note 165, at 65; Williams, *supra* note 154, at 459.

172. See RUSSELL & BOLEN, *supra* note 154, at 26–27; Jane E. Brody, *The Twice-Victim of Sexual Assault*, N.Y. TIMES, Dec. 12, 2011, at D7 (asserting that the legal system and media often distrust rape victims until the rape is proven); see also Nicholas Kristof, *A Reason Not To Report Rape*, N.Y. TIMES (May 1, 2009, 8:07 AM), <http://kristof.blogs.nytimes.com/2009/05/01/a-reason-not-to-report-rape> (noting that women made deliberate decisions not to report rape, believing that it would damage their reputations without accomplishing anything). The *National Women's Study* revealed that a significant majority of women both fear being held responsible and having their families find out. See RUSSELL & BOLEN, *supra* note 154, at 27.

and put the experience behind them.¹⁷³ Victims may also decide to remain quiet because of the additional trauma associated with the experience of police and medical reporting.¹⁷⁴

Numerous reports observe that the process of police reporting further traumatizes raped women.¹⁷⁵ In collecting evidence, the police may “reinforce the cycle of victim blaming” and ask insensitive questions.¹⁷⁶ Women may choose not to report because they foresee this type of degrading and sexist response.¹⁷⁷ Further, some believe that even if they were to report, the system would likely fail¹⁷⁸ because “[n]inety-eight percent of the victims of rape never see their attacker caught, tried, and imprisoned.”¹⁷⁹ Instead, they believe the perpetrator will go free and unpunished.¹⁸⁰

Although a hospital examination after sexual assault is important, the psychological and physical experience typically deters women from reporting to medical personnel.¹⁸¹ The exam criteria require intrusive means to recover physical evidence and private details of the attack.¹⁸² During the physical component, medical personnel are directed to inspect the woman’s entire body for blood, semen, hair, fibers, or other evidence.¹⁸³ Medical personnel often conduct a gynecological exam and scrutinize the anal skin for signs of penetration.¹⁸⁴ These examinations would be uncomfortable under any circumstances, but following rape, a woman may feel revictimized and powerless.¹⁸⁵ The medical personnel request information about consensual sexual conduct the woman may have engaged

173. See RUSSELL & BOLEN, *supra* note 154, at 26–27.

174. See Shana L. Maier, “*I Have Heard Horrible Stories . . .*”: Rape Victim Advocates’ Perceptions of the Revictimization of Rape Victims by the Police and Medical System, 14 VIOLENCE AGAINST WOMEN 786 (2008); see also JODY RAPHEAL, RAPE IS RAPE: HOW DENIAL, DISTORTION, AND VICTIM BLAMING ARE FUELING A HIDDEN ACQUAINTANCE RAPE CRISIS 137 (2013) (“[P]olice, church, educators, and media—often treat rape victims with indifference, disbelief, and punishment.”).

175. See MADIGAN & GAMBLE, *supra* note 170, at 74.

176. *Id.*

177. See RUSSELL & BOLEN, *supra* note 154, at 26–27.

178. See DEAN & DEBRUYN-KOPS, *supra* note 165, at 65; RUSSELL & BOLEN, *supra* note 154, at 27. The woman may have increased doubts about the benefit of reporting if she is unable to provide a detailed description of her attacker. See DEAN & DEBRUYN-KOPS, *supra* note 165, at 65. Additionally, if a woman is a racial minority and was raped by a white man, she may believe that the racist law enforcement and criminal justice system will not provide her with adequate recourse. See RUSSELL & BOLEN, *supra* note 154, at 27.

179. STAFF OF S. COMM. ON THE JUDICIARY, 103D CONG., THE RESPONSE TO RAPE: DETOURS ON THE ROAD TO EQUAL JUSTICE, at iii (Comm. Print 1993).

180. See DEAN & DEBRUYN-KOPS, *supra* note 165, at 66; see also Brody, *supra* note 172 (noting that the majority of rape prosecutions are unsuccessful).

181. See ALLISON & WRIGHTSMAN, *supra* note 157, at 222. Women who have not suffered other serious injuries along with the rape and were not severely beaten also may not consider a medical examination to be essential. See *id.*

182. See MADIGAN & GAMBLE, *supra* note 170, at 85. Hospital staff has been the subject of criticism for unsympathetic treatment of sexually assaulted women. See DEAN & DEBRUYN-KOPS, *supra* note 165, at 74.

183. MADIGAN & GAMBLE, *supra* note 170, at 85.

184. See *id.*

185. See *id.*

in during the days before the rape, as well as specific details about the assault.¹⁸⁶ These details include the number of assailants; the force, threats, or intimidation used; and the presence of any injuries.¹⁸⁷ They may inquire about whether there was oral, vaginal, or anal penetration; whether the assailant ejaculated; and whether he used a condom.¹⁸⁸ Finally, the woman's activities following the attack are scrutinized, as hospital workers ask "whether she has changed her clothes, douched, bathed, or washed, used mouthwash, eaten, drunk, urinated, defecated, or used medication or alcohol."¹⁸⁹

Even in cases where a woman does report to a hospital, medical results and documentation are unlikely to conclusively prove the rape occurred.¹⁹⁰ First, unless the hospital report is made within twenty-four hours following the assault, the examination results usually will not be medically determinative.¹⁹¹ However, of the small percentage of women who report to the hospital after rape, only 40 percent of them go for the examination within the first twenty-four hours.¹⁹² Second, unless the rape caused serious physical injuries, the report will also not conclusively reveal that the woman was sexually assaulted.¹⁹³

3. The Victim Populations That Are Even Less Likely To Report

While reporting is rare under all circumstances, it is even less likely when the victims are acquainted, in varying degree, with their attackers.¹⁹⁴ Society perpetuates a myth that most rapes are committed by a "violent and sadistic [stranger who] us[es] extreme force to violate his victim."¹⁹⁵ In reality, a significant majority of women know their rapists.¹⁹⁶ Statistics suggest that a woman is four times as likely to be raped by someone she knows than she is by a stranger.¹⁹⁷ Further, although almost half of all

186. *See id.* at 86.

187. *See id.*

188. *See id.*

189. *Id.*

190. *See* Pollack, *supra* note 158, at 333.

191. *See id.*

192. *See id.*

193. *See id.*

194. *See* WARSHAW, *supra* note 154, at 12 ("[W]hile rapes by strangers are still underreported, rapes by acquaintances are virtually nonreported.").

195. Aviva Orenstein, *No Bad Men!: A Feminist Analysis of Character Evidence in Rape Trials*, 49 HASTINGS L.J. 663, 677-78 (1998).

196. NAT'L VICTIM CTR. & NAT'L CRIME VICTIMS RESEARCH & TREATMENT CTR., *supra* note 156, at 4 (finding that only 22 percent of raped women's assailants were strangers or men they did not know personally). The *National Women's Study* established that "[n]ine percent of victims were raped by husbands or ex-husbands; eleven percent by their fathers or step-fathers; ten percent by boyfriends or ex-boyfriends; sixteen percent by other relatives; and twenty-nine percent by other non-relatives, such as friends and neighbors." *Id.*

197. *See* WARSHAW, *supra* note 154, at 11 ("Those figures make acquaintance rape and date rape more common than left-handedness or heart attacks or alcoholism.").

raped women feared severe bodily harm or death during the assault, 70 percent of victims did not sustain physical injuries.¹⁹⁸

Women are also less likely to report if they become pregnant as a result of the rape.¹⁹⁹ Between 80 and 90 percent of women who conceive during rape choose never to report the crime.²⁰⁰ Some research suggests that, while a raped woman who does not conceive fears being victimized by public stigma, “[r]eporting a rape-pregnancy could be even more costly,” because pregnant women face even crueler social consequences than other raped women.²⁰¹

This problem is exacerbated for a woman who chooses to keep her child.²⁰² People have trouble believing that pregnant women were raped if they make the choice to give birth.²⁰³ Most women fear that they will not be trusted, or that they will be disparaged at the hospital or at police headquarters.²⁰⁴

A woman’s socioeconomic background may also influence her odds of experiencing sexual assault and her propensity to report the abuse.²⁰⁵ Women who live in neighborhoods with a higher incidence of crime and juvenile delinquency are at a greater risk of sexual assault.²⁰⁶ Further, the reaction of these women may differ from that of upper-class women, who tend to have less familiarity with violence.²⁰⁷ Women of lower socioeconomic classes may be less inclined to report sex offenses.²⁰⁸

198. NAT’L VICTIM CTR. & NAT’L CRIME VICTIMS RESEARCH & TREATMENT CTR., *supra* note 156, at 4. Myths portray rapists as unhinged strangers who inflict severe physical injuries on their victims. Christina E. Wells & Erin Elliott Motley, *Reinforcing the Myth of the Crazy Rapist: A Feminist Critique of Recent Rape Legislation*, 81 B.U. L. REV. 127, 130 (2001). These myths prompt a response in the law enforcement and criminal justice systems to distinguish the “real” rapes that fit the paradigmatic image from other types of rapes reported. *See id.* Therefore, personnel that handle rape reports may disregard those where the man is guilty of rape but the facts are inconsistent with the stereotype. *See id.*

199. *See* Prewitt, *supra* note 6, at 837 n.65.

200. Amy R. Sobie, *Finding Real Answers for Pregnant Sexual Assault Victims*, in VICTIMS AND VICTORS 164, 164 (David C. Reardon et al. eds., 2000) (interviewing Kay Zibolsky, the founder of the Life After Assault League, an organization that counsels sexual assault victims).

201. *See* Jonathan A. Gottschall & Tiffani A. Gottschall, *Are Per-incident Rape-Pregnancy Rates Higher Than Per-incident Consensual Pregnancy Rates?*, 14 HUM. NATURE 1, 6 (2003).

202. *See* Telephone Interview with Juda Myers, *supra* note 1.

203. *See id.*

204. *See id.*

205. *See* DEAN & DEBRUYN-KOPS, *supra* note 165, at 107; *see also* SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* 349 (1975).

206. *See* BROWNMILLER, *supra* note 205, at 349.

207. *See* DEAN & DEBRUYN-KOPS, *supra* note 165, at 107.

208. *Cf. id.* (“Women from the lower classes may accept rape as one more trial in their already difficult lives.”).

4. The False-Reporting Myth

One common belief is that rapes are often falsely reported.²⁰⁹ This belief, however, is belied by data.²¹⁰ Although there is a prevalent societal myth that women often falsely cry rape, only 2 percent of rape reports are fabricated,²¹¹ roughly the same rate as for other crimes.²¹² Some reasons that society disparages rape allegations include institutional patriarchy and the desire to feel safe, even when victim blaming is the cost.²¹³ Myths about false reporting may be generated by errors in police procedures that label “unsubstantiated” claims as “false,” and by the media that provides disproportionate coverage of sensationalized occurrences.²¹⁴ Unfortunately, rape myths remain a pervasive part of society.²¹⁵

B. The Psychological Impact of Rape on Victims

Even once a rapist has committed the crime and left the scene, the victim, often in a state of extreme shock, still fears for her life and safety.²¹⁶ As time passes, victims will try to understand what happened to them.²¹⁷ They will frequently feel anger, sadness, shame, and fear, often simultaneously.²¹⁸ Victims often experience physical symptoms, shifts in their lifestyle and behavior, and, significantly, phobias.²¹⁹

209. See Kimberly A. Lonsway, Joanne Archambault & David Lisak, *False Reports: Moving Beyond the Issue To Successfully Investigate and Prosecute Non-stranger Sexual Assault*, 3 VOICE 1, 1 (2009).

210. See Prewitt, *supra* note 6, at 837 n.65; see also Mahri Irvine, *Myth Busting: False Rape Reports*, AM. WAY LIFE MAG. (April 5, 2010, 4:06 PM), <http://www.awolau.org/article/2010/04/myth-busters-false-rape-reports>.

211. See Prewitt, *supra* note 6, at 837 n.65; see also *Myths and Facts About Sexual Assault*, HOPE FOR HEALING.ORG (June 2004), <http://hopeforhealing.org/myths.pdf>. The small percentage of falsely reported rapes is in stark contrast to public misconceptions that portray the incidence of falsely cried rape at about 40 percent. See Irvine, *supra* note 210. Even though false reporting occurs for rape at the same incidence of other crimes, rape victims are held to a more scrutinizing standard, which is not unusual, as “[r]ape is treated very differently than other felonies.” Brody, *supra* note 172 (“There is no other crime . . . where the victim is more victimized The victim is always on trial.”).

212. See Prewitt, *supra* note 6, at 837 n.65; see also *Myths and Facts About Sexual Assault*, *supra* note 211.

213. See Irvine, *supra* note 210.

214. See *id.* Significantly, women who do falsely cry rape suffer from severe mental or emotional problems, and typically do not specify particular perpetrators, but imprecisely describe a stranger. See *id.* (asserting that in the rare occasion that false reports are made, it is “not out of desire for revenge against a specific person”).

215. Martha R. Burt, *Rape Myths*, in CONFRONTING RAPE AND SEXUAL ASSAULT 129, 131 (Mary E. Odem & Jody Clay-Warner eds., 1998). Myths that focus on the victim can be grouped into four categories: “nothing happened; no harm was done; she wanted or liked it; and she asked for or deserved it.” *Id.*

216. See MADIGAN & GAMBLE, *supra* note 170, at 82. The psychological conclusions expressed reflect prevalent reactions to rape, however, “[t]here is no uniform response to a rape, or a uniform time for recovery.” BROWNMILLER, *supra* note 205, at 361.

217. See ALLISON & WRIGHTSMAN, *supra* note 157, at 155.

218. See *id.*

219. See *id.* at 155–56.

A phobia develops from associations with painful stimuli, and rape is a common phobia-inducing and conditioning event where the victim will fear things she associates with the attack.²²⁰ Victims will usually take pains to prevent contact with the object of their fears.²²¹ Anything that reminds a woman of the rape can trigger panic, such as “[s]melling the cologne that the offender wore, seeing a couch like the one [the victim was] abused on, or hearing some music” that had been playing.²²²

This section examines the emotional and psychological stress a victim experiences when encountering her attacker. The following discussion reflects the terror of facing one’s rapist under any circumstances, and particularly highlights how this harm is magnified in circumstances where the victim is subjected to regular interaction with her rapist and has an obligation to him because he is granted parental rights to her child conceived during the rape. This section emphasizes the minimal protection afforded to women whose rapists assert parental rights and the connection to welfare’s child support cooperation requirement.

1. Harm Inflicted on Victims Forced To See Their Rapist

Women develop phobias of reminders of their rapist, such as men who look like the attacker.²²³ As one woman recounted:

I thought I saw his face—eerie smile and all. I panicked. With my heart pounding out of my chest, I turned around and ran as fast as I could down Fourth Avenue, all the while yelling, “Move, move!” Fifteen blocks later, I finally stopped running. My brain was numb and my legs felt like jelly.²²⁴

Unsurprisingly, any contact that a victim has with their rapist can be traumatizing and increase the damage originally inflicted by the abuse.²²⁵ Some courts, recognizing the horror a victim would experience if made to face her attacker, have arranged protections for raped women testifying with their rapist in the courtroom.²²⁶ One raped woman reported even hiding in the witness box while she testified.²²⁷ Other circumstances that

220. *See id.* at 156.

221. *See id.*

222. SHARICE A. LEE, *THE SURVIVOR’S GUIDE* 5 (1995).

223. *See* DEAN & DEBRUYN-KOPS, *supra* note 165, at 111.

224. Lindsay Simone, *From Fearful Victim to Fearless Survivor!*, HUFFINGTON POST (July 6, 2012, 8:18 AM), http://www.huffingtonpost.com/lindsay-simone/from-fearful-victim-to-fearless-survivor_b_1652337.html.

225. *See* Prewitt, *supra* note 6, at 833 (noting that no studies have analyzed the psychological effect to victims who are forced to maintain ties to their rapist, but that parallels can be drawn to the recovery difficulties raped women experience when they face their rapists during prosecutions).

226. *See* MADIGAN & GAMBLE, *supra* note 170, at 97; Prewitt, *supra* note 6, at 831 n.20.

227. *See* MADIGAN & GAMBLE, *supra* note 170, at 97. The attorneys arranged for the victim to hide during her testimony, because she had said that: “If I’d had to face him, I wouldn’t have been able to do it.” *Id.*; Prewitt, *supra* note 6, at 831 n.20.

put women in the painful position of forced interaction with their rapist have been strongly criticized.²²⁸

2. Rapists Seeking Parental Rights

The harm a victim experiences when seeing her rapist is infinitely magnified when the rapist is given legally protected rights to see the victim and child on a regular basis.²²⁹ However, the majority of states do not provide statutory protection for women who are victims of rape, conceived a child, and chose to raise the baby.²³⁰ In most jurisdictions, a woman's rapist can assert parental rights, such as custody and visitation rights, over children born to his victim.²³¹

Rapists seek custody or visitation from their victims with sufficient frequency to make this a pressing issue for women.²³² "[I]t is not surprising that a man who cruelly degrades a woman would also seek to torture her in an even more agonizing way, by seeking access to her child."²³³

The welfare system's child support enforcement program is one of the ways that rapists most frequently discover they conceived a child.²³⁴ Along with this information, the rapist would learn the location and contact information of their victims and children.²³⁵ Therefore, victim security from child support enforcement is especially important in this context.²³⁶

III. PATTERNS FROM THE STATE SURVEY: EVIDENTIARY REQUIREMENTS THROUGHOUT THE COUNTRY AND WHICH REQUIREMENT BEST COMPORTS WITH THE REALITIES OF RAPE

This Part first presents the various standards that have been adopted for evidencing good cause nationwide. Next, this Part considers various drawbacks, examining problems of application. Finally, it suggests adopting the minority permissive approach, with a modified view of the types of evidence permitted to prove rape. Under this view, a rape victim would be able to provide sworn corroboration of her claim for good cause. Additionally, official documentation from social workers or psychological professionals substantiating the victim's belief that cooperation would be harmful to herself and her child should be considered.

A state survey was conducted for this Note to examine the evidentiary standards to merit good cause across the country. State's evidentiary

228. See Prewitt, *supra* note 6, at 831 n.20 (focusing specifically on circumstances where a raped woman is forced to interact with her rapist on a regular basis because he was granted parental rights to the child conceived during rape).

229. Shauna Prewitt, *Raped, Pregnant and Ordeal Not Over*, CNN (Aug. 23, 2012), <http://www.cnn.com/2012/08/22/opinion/prewitt-rapist-visitation-rights/index.html>.

230. See *No Rights for Rapists*, J. GAZETTE (Aug. 28, 2012, 3:00 AM), <http://www.journalgazette.net/article/20120828/EDIT05/308289993/1147/EDIT07>.

231. See *id.*

232. See *id.*

233. Prewitt, *supra* note 229.

234. See *supra* note 7 and accompanying text.

235. See *id.*

236. Telephone Interview with Juda Myers, *supra* note 1.

requirements can be put into three broad categories.²³⁷ All states look for official documentation,²³⁸ which often includes birth certificates and records from medical professionals and law enforcement.²³⁹ The majority of states allow for sworn statements of third parties to substantiate the claim.²⁴⁰ However, a minority of states, on either end of the spectrum, outline either a more achievable, “permissive” approach, or articulate more demanding, “restrictive” standards.²⁴¹

A. The Majority Approach: Third-Party Statements Only

The majority approach has been widely adopted by states and requires corroboration for good cause claims based on rape with official documentation and third-party statements.²⁴² Official documentation seeks

237. There are a few outlier states with ambiguous requirements or slight variations on the typical categories recognized. *See, e.g., Eligibility Policy*, KAN. DEPARTMENT HEALTH & ENV'T, <https://kchap.kdhe.state.ks.us/kfmam/main.asp?tier1=02000&tier2=02060> (last visited Nov. 22, 2013); *Rights and Responsibilities*, NEB. DEPARTMENT HEALTH & HUM. SERVICES, http://dhhs.ne.gov/children_family_services/AccessNebraska/Documents/RightsAndResponsibilities.pdf (last visited Nov. 22, 2013). For example, Kansas's rule seems to fall somewhere in between the majority standard that allows for third party testimony but no applicant corroboration and the minority permissive approach that allows both. *See infra* Part III.A–C; *see also Eligibility Policy, supra*. The rule provides that good cause claims need to be corroborated with documentary evidence, and that statements of the child's caretaker without support do not meet that requirement. *Eligibility Policy, supra*. The rule states that the “mere belief that pursuing paternity or support is not in the client's or the child's best interest is not sufficient An individual's statement and one corroborating piece of evidence shall meet the burden of proof unless there is an independent reasonable basis to doubt the veracity of the statement.” *Id.* Corroborating evidence includes police, court, legal, medical, clerical, and social agency reports, petition from abuse orders, and court documents that indicate adoption is pending. *Id.* The rule then explains that third parties with knowledge of the events giving rise to the claim and physical evidence of domestic violence or other evidence validating the statement are considered. *Id.* Finally, the rule delineates an exception that makes the Kansas standard a hybrid between the majority and permissive approaches, canceling the general directive excluding statements from the applicant under certain circumstances. *See id.* The exception provides that:

in extremely rare situations such as when an individual is in hiding and is afraid that there could be information disclosed that could reveal her whereabouts and where the Case Manager does not doubt the veracity of the individual's statement, a written statement from the victim signed under penalty of perjury shall meet the burden of proof.

Id. This exception illustrates that Kansas will accept applicant corroboration in certain, well-defined, circumstances. *Id.*

238. *See, e.g.,* ALA. ADMIN. CODE r. 660-2-2.23 app. A (2009); ARIZ. REV. STAT. § 46-292 (LexisNexis 2010); CAL. WELF. & INST. CODE § 11477.04 (West 2012); HAW. CODE R. § 17-653-20 (LexisNexis 1999); ILL. ADMIN. CODE tit. 89, § 160 (2012); ME. REV. STAT. ANN. tit. 22, § 3785 (2012); MINN. STAT. ANN. § 256.741 (West 2012); 55 PA. CODE § 187.27 (2010); UTAH ADMIN. CODE r. 986-200-208 (2012); *see also* Fontana, *supra* note 22, at 375.

239. *See, e.g.,* ALA. ADMIN. CODE r. 660-2-2.23; ARIZ. REV. STAT. § 46-292; CAL. WELF. & INST. CODE § 11477.04; HAW. CODE R. § 17-653-20; ILL. ADMIN. CODE tit. 89, § 160; ME. REV. STAT. ANN. tit. 22, § 3785; MINN. STAT. ANN. § 256.741; 55 PA. CODE § 187.27; UTAH ADMIN. CODE r. 986-200-208; *see also* Fontana, *supra* note 22, at 375.

240. *See infra* Part III.A; Fontana, *supra* note 22, at 375.

241. *See infra* Part III.B–C.

242. *See supra* notes 238–40 and accompanying text.

verification records from sources such as medical professionals and law enforcement.²⁴³ Third parties can typically include family members, friends, neighbors, attorneys, clergy members, and social workers.²⁴⁴ This section looks at two examples of state evidentiary requirements, New York and Pennsylvania, where the majority standard is applied.

1. New York's Evidentiary Requirement

New York's cooperation requirement forces a benefits recipient to establish the paternity of the absent parent and provide his contact information, including social security number, date of birth, and employer's name and address.²⁴⁵ To avoid this requirement, good cause waivers are provided when the child was conceived from rape, an adoption is underway, or when physical and emotional harm would result.²⁴⁶

To prove good cause, individuals seeking benefits are assigned a public assistance caseworker who investigates the claim.²⁴⁷ The benefits seeker then has twenty days to provide her caseworker with documents supporting her claim.²⁴⁸ These documents include "court, medical, criminal, child protective services or police records or sworn statements from other people that show that the other parent might harm you or your child."²⁴⁹

Thus, New York's rule specifies that official corroboration from police, medical reports, and other sources such as child protective services will satisfy the standard.²⁵⁰ Additionally, third parties may also verify the claim through sworn statements that confirm that good cause exists.²⁵¹

2. Pennsylvania's Evidentiary Requirement

Pennsylvania waives the cooperation requirement if the benefits recipient can show that the child was conceived of rape, or that adoption is pending or being considered by a social agency.²⁵² The *Pennsylvania Code's* evidentiary provision specifies the documents that may verify an exception, and which good cause circumstances they validate.²⁵³ In circumstances

243. *See supra* note 238 and accompanying text.

244. *See, e.g.*, GA. DEP'T OF HUMAN SERVS., NOTICE OF REQUIREMENT TO COOPERATE AND RIGHT TO CLAIM GOOD CAUSE FOR REFUSAL TO COOPERATE IN CHILD SUPPORT ENFORCEMENT AND THIRD PARTY RESOURCE REQUIREMENTS 2 (2011); Alaska Dep't of Health & Soc. Servs., *Family Medicaid Eligibility Manual*, DPAWEB, http://dpaweb.hss.state.ak.us/manuals/fam-med/fam-med.htm#5016/5016-4_failure_to_cooperate_with_cssd.htm (last visited Nov. 22, 2013) (explaining the criteria for establishing good cause for failure to fulfill the cooperation requirement in Alaska).

245. *See Public Assistance and Child Support*, LEGAL ASSISTANCE W.N.Y. (Apr. 2012), <http://www.lawny.org/index.php/benefits-self-help-135/welfare-self-help-46/228-public-assistance-and-child-support>.

246. *See id.*

247. *Id.*

248. *Id.*

249. *Id.*

250. *See id.*

251. *See id.*

252. *See* 55 PA. CODE § 187.27 (2010).

253. *See id.*

where the child was conceived from rape, “[a] birth certificate or medical or law enforcement records” can substantiate the claim.²⁵⁴

Additional documents that substantiate various circumstances giving rise to good cause claims include court, criminal, child protective services, or social services records.²⁵⁵ Third-party statements from “individuals other than the applicant or recipient with knowledge of the good cause circumstances” can also be used as corroboration.²⁵⁶ The provision lists examples of third parties who may lend their statements. Among them are members of law enforcement, psychological service providers, and legal representatives, as well as friends, family, and neighbors of the applicant.²⁵⁷

B. The Minority Permissive Approach: Both Third-Party Statements and Applicant Corroboration Are Admitted

The minority permissive approach incorporates the same evidence required under the majority approach, but also allows an additional consideration.²⁵⁸ While this standard maintains the official documentation²⁵⁹ and third-party provisions,²⁶⁰ it also accepts statements from the applicant seeking benefits for consideration.²⁶¹ This section looks at two evidentiary standards from California and the District of Columbia as models for the minority permissive approach.

1. California’s Evidentiary Requirement

The *California Welfare and Institutions Code* enumerates seven circumstances where good cause exists, including when a child is conceived during rape.²⁶² The provision makes clear that a criminal conviction is not required to prove the rape.²⁶³ The provision also stipulates that the evidentiary sources listed are not the only means of corroboration that may be considered.²⁶⁴

The code enumerates several types of evidence that support a good cause claim, including “[b]irth certificates or medical, mental health, rape crisis, domestic violence program, or law enforcement records that indicate that the child was conceived as the result of incest or rape.”²⁶⁵ Statements under penalty of perjury can also be admitted where the individual providing the statement has knowledge of the facts underlying the applicant’s good cause claim.²⁶⁶ These statements will be considered from “individuals, including

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.*

258. *See infra* Part III.B.1–2.

259. *See supra* note 239 and accompanying text.

260. *See infra* Part III.B.1–2.

261. *See infra* Part III.B.1–2.

262. *See* CAL. WELF. & INST. CODE § 11477.04 (West 2012).

263. *See id.*

264. *See id.*

265. *Id.*

266. *Id.*

the applicant or recipient,” allowing both third parties and the applicant herself to support the good cause claim.²⁶⁷ Finally, the code provides that “[a] sworn statement by a victim shall be sufficient to establish abuse unless the agency documents in writing an independent, reasonable basis to find the recipient not credible.”²⁶⁸

Thus, the California standard specifies an extended list for which types of documentation will be accepted.²⁶⁹ Typical reports from medical and law enforcement sources are named along with institutional records tailored to the victim’s circumstances, such as those from rape crisis programs.²⁷⁰ Most importantly, both the applicant and a third party are independently entitled to present their own statements as evidence.²⁷¹

2. The District of Columbia’s Evidentiary Requirement

Good cause circumstances exist in D.C. when the applicant conceives a child from rape, is in the midst of an adoption, or is being counseled on adoption with a social agency.²⁷² The applicant is given twenty days to substantiate her claim after it is made, although, under certain circumstances, more time will be provided.²⁷³

The evidentiary standard explains that a “birth certificate or medical, mental health, or law enforcement record which indicates the child was conceived as a result of rape or incest” can be used as verification.²⁷⁴ Additionally, physical evidence and criminal, court, social services, or clerical records are among the list of evidence that can indicate that the absent parent “might inflict physical, mental, sexual, or emotional harm on the child, applicant/recipient, household member, or immediate family member.”²⁷⁵

In D.C., the standard emphasizes that mental health records are acceptable.²⁷⁶ Medical records and statements from health professionals reflecting the mental health of the child and applicant are considered.²⁷⁷ Finally, the corroborating-statement provision allows for a sworn statement from an individual.²⁷⁸ The individual verifying good cause can be either a

267. *Id.*

268. *Id.* The provision that notes that applicant testimony will be accepted unless there is a “reasonable basis to find the recipient not credible” may be a concern without further explication on what constitutes a reasonable basis, as rape victims have been historically mistrusted on unsubstantiated grounds. *See supra* notes 198, 211 and accompanying text.

269. *See* CAL. WELF. & INST. CODE § 11477.04.

270. *See id.*

271. *See id.*

272. *See Chapter 2—Child Support Requirements*, DEPARTMENT HUM. SERVICES, <http://dhs.dc.gov/page/chapter-2-child-support-requirements> (last visited Nov. 22, 2013) (explaining the criteria for establishing good cause for failure to fulfill the cooperation requirement in D.C.).

273. *See id.*

274. *Id.*

275. *Id.*

276. *See id.*

277. *Id.*

278. *See id.*

third party or the applicant herself, as long as the individual's knowledge can provide the basis for the claim.²⁷⁹

C. The Minority Restrictive Approach: Both Third-Party Statements and Applicant Corroboration Are Omitted

Some states have an elevated requirement, and they do not allow for first-party corroboration *or* third-party testimony to be admitted. Only official documentation is accepted as evidence. Therefore, if the applicant is in the overwhelming majority of women who do not report when they are raped or sexually assaulted, she will likely not merit a good cause exception. This section looks at evidentiary requirements from Alabama and Utah to illustrate the minority restrictive approach.

1. Alabama's Evidentiary Requirement

Alabama lists good cause circumstances as those where the child was conceived from rape, an adoption is pending or being decided, or the absent parent will likely inflict physical or emotional harm on both mother and child.²⁸⁰ Once the good cause claim is registered, an applicant's caseworker will inform her of the corroboration necessary.²⁸¹

The caseworker may request "records showing that the child was conceived as a result of incest or forcible rape . . . includ[ing] birth certificate or medical or police records."²⁸² In cases where the applicant claims that the absent parent poses a physical or emotional danger to herself or the child, court, criminal, law enforcement, social services, and psychological records are also listed as evidence.²⁸³ The code specifies that an applicant may also be asked to deliver "[a]ny other evidence that your worker says is needed before the Department of Human Resources can decide whether you have 'good cause.'"²⁸⁴

Alabama's evidentiary rule thus allows for the usual documentary verification from medical or police reports and birth certificates without any additional acceptable forms mentioned.²⁸⁵ Further, Alabama requires that the documentation support the particular finding of forcible rape.²⁸⁶ The rule reserves the possibility that other forms of evidence other than those listed will be required,²⁸⁷ but it excludes third-party statements and applicant corroboration from consideration.²⁸⁸

279. *See id.*

280. ALA. ADMIN. CODE r. 660-2-2.23 app. A (2009).

281. *Id.*

282. *Id.*

283. *Id.*

284. *Id.*

285. *See id.*

286. *See id.*

287. *See id.*

288. *See id.*

2. Utah's Evidentiary Requirement

Utah's evidentiary requirement specifically lists the verification permitted where a child was conceived from rape.²⁸⁹ A written request for good cause must be given to the welfare department and the applicant has twenty days after filing to obtain corroboration of her good cause claim.²⁹⁰ There is no exception listed for extenuating circumstances where a woman might need more time to gather what evidence she can obtain.²⁹¹

The rule articulates that where a child was conceived from incest or rape, the applicant must provide birth certificates, medical, court, or law enforcement records, or records from another state or federal agency.²⁹² Utah does not permit any type of corroboration beyond official documentation.²⁹³ Instead, the rule demands that an applicant present birth certificates or law enforcement, medical, court, or agency records for her good cause claim to be satisfied.²⁹⁴ Other evidentiary sources are not listed, and a woman can neither provide sworn third-party statements, nor can she substantiate the claim with her own testimony.²⁹⁵

D. Understanding the Evidence Permitted Specifically When the Child Was Conceived from Rape: States That Categorize the Requirements

Some states' requirements, such as Utah's rule discussed above to demonstrate the minority restrictive approach,²⁹⁶ do not present all the evidence that can satisfy one of the existing good cause circumstances together in one list.²⁹⁷ Instead, these states list the circumstances for good cause independently and then provide the evidentiary qualifications applicable to that situation.²⁹⁸ This section looks at the categorized evidentiary requirements of Arizona's and Virginia's rules, to illustrate that the evidence permitted specifically in the rape context may be unusually narrow.

1. Arizona's Evidentiary Requirement

In Arizona, the applicant has twenty days from the date good cause is requested to substantiate her claim.²⁹⁹ The agency does not provide

289. UTAH ADMIN. CODE r. 986-200-208 (2012).

290. *Id.*

291. *Id.*

292. *Id.*

293. *See id.*

294. *Id.*

295. *See id.*

296. *See supra* Part III.C.2.

297. *See, e.g.*, ARIZ. REV. STAT. § 46-292 (LexisNexis 2010); UTAH ADMIN. CODE r. 986-200-208; VA. DEP'T OF SOC. SERVS., TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) GUIDANCE MANUAL § 201.10(F), at 4b (2009), available at <http://www.dss.virginia.gov/files/division/bp/tanf/manual/200.pdf>.

298. *See, e.g.*, ARIZ. REV. STAT. § 46-292; UTAH ADMIN. CODE r. 986-200-208; VA. DEP'T OF SOC. SERVS., *supra* note 297, § 201.10(F), at 4b.

299. *See* ARIZ. REV. STAT. § 46-292(G)(4).

exceptions to this time constraint.³⁰⁰ Arizona delineates circumstances that merit a good cause exemption in Title 46 of the *Arizona Revised Statutes* and explains that one or more of the circumstances enumerated are grounds for good cause.³⁰¹ Good cause is valid when: physical or emotional harm to the parent, child, or caretaker relative will result from cooperation; adoption proceedings are pending in court; the applicant has been working with an agency for less than ninety days on the process of considering the child for adoption; or the child was conceived through sexual assault or incest.³⁰²

The evidentiary requirements are then categorized by the circumstances constituting good cause, clarifying which documents will substantiate each type of claim.³⁰³ If the applicant claims that the child was conceived as a result of sexual assault or incest, the following records are acceptable: “law enforcement, court, medical, criminal, psychological, social service or governmental records, or sworn statements from persons with personal knowledge of the circumstances surrounding the conception of the child.”³⁰⁴

Arizona follows the majority approach.³⁰⁵ In Arizona’s rape-specific evidentiary standard, it provides for official documentation, including court, criminal, medical, and governmental records.³⁰⁶ Significantly, the evidence required in the rape context includes psychological corroboration as well.³⁰⁷ Arizona allows for third-party statements.³⁰⁸

2. Virginia’s Evidentiary Requirement

Virginia similarly has a twenty-day limit by which, without exception, an applicant must bring evidence of her claim.³⁰⁹ Virginia’s categorized rule provides that the agency decide that there is good cause when provided with sufficient evidence.³¹⁰ Three circumstances are listed, each followed by the particular types of acceptable evidence: (1) when the child is conceived as a result of incest or forcible rape, (2) when the child is going to be adopted, and (3) when physical or emotional harm will result.³¹¹

Under incest or forcible rape, the following evidence is sufficient to determine the existence of good cause: “[b]irth certificates or court, medical, criminal, child protective services, social services, or law enforcement records.”³¹² Under physical or emotional harm, the rule

300. *See id.*

301. *See id.*

302. *Id.*

303. *See id.*

304. *Id.*

305. *See supra* Part III.A.

306. *See* ARIZ. REV. STAT. § 46-292.

307. *See id.*

308. *See id.*

309. *See* VA. DEP’T OF SOC. SERVS., *supra* note 297, § 201.10(F), at 4b.

310. *See id.*

311. *See id.*

312. *Id.*

provides for each of the forms of documentation permitted in the rape context.³¹³ However, in these cases, the statute also permits psychological records and

sworn statements from individuals other than the applicant or recipient with knowledge of the circumstances . . . or a written statement from a domestic violence services program . . . indicating that the putative father or noncustodial parent might inflict physical or emotional harm on the child or caretaker-relative.³¹⁴

These categorized requirements suggest that “physical and emotional harm” and “incest or forcible rape” are considered separate good cause circumstances that merit different evidentiary standards.³¹⁵ Significantly, Virginia’s evidentiary requirement includes psychological reports where the woman is specifically claiming fear of physical or emotional harm, but not where the child was conceived from rape.³¹⁶

Additionally, in some states, if a recipient submits a psychological report demonstrating that they are suffering from nightmares, nervousness, or other symptoms of posttraumatic stress disorder (PTSD) or depression, it will not be effective in determining good cause.³¹⁷ Welfare agency liaisons have said that evidence of PTSD or depression symptoms is a mental health issue, rather than a rape or domestic violence issue.³¹⁸ Though welfare agencies do not give good cause exceptions based on mental health, these symptoms should be considered in the good cause determination equation, as they are indicative of sexual abuse.³¹⁹

IV. THE FITTING STANDARD: EMBRACING A MODIFIED MINORITY PERMISSIVE APPROACH

The majority approach and minority restrictive approach are problematic. Each of these standards focuses on the written documentation requirement.³²⁰ However, the realities of rape reporting illustrate that the vast majority of women will not be able to satisfy an evidentiary requirement based on official documentation.³²¹ Additionally, reporting statistics demonstrate that the population of women likely applying for benefits through the welfare system are even less inclined to report compared to the rape victim population overall.³²² Women applying for rape-based good cause exceptions from welfare’s child support enforcement requirement are all rape victims who were impregnated, decided to carry the child to term, and are from low socioeconomic situations; statistically, each

313. *Id.*

314. *Id.*

315. *See* ARIZ. REV. STAT. § 46-292 (LexisNexis 2010); VA. DEP’T OF SOC. SERVS., *supra* note 297, § 201.10(F), at 4b.

316. VA. DEP’T OF SOC. SERVS., *supra* note 297, § 201.10(F), at 4b.

317. *See* Interview with Anonymous, *supra* note 150.

318. *See id.*

319. *See id.*

320. *See supra* Part III.A, C.

321. *See* discussion *supra* Part II.A.1.

322. *See generally* discussion *supra* Part II.A.3.

of these factors independently reflect a lower instance of reporting.³²³ Therefore, women who require good cause exceptions will overwhelmingly be unable to meet the evidentiary requirements.³²⁴

The minority restrictive approach places a particularly heavy burden on women.³²⁵ Since the minority restrictive approach does not accept corroboration from third-party statements, every woman without official documentation has no alternative measures to prove she was raped.³²⁶ A study found that college-aged women in particular are more than eight times more likely to confide their rape to a friend or family member than they are to seek help from a therapist or report to the hospital and police.³²⁷ Therefore, allowing third-party testimony is invaluable to women seeking protection and can help a significant number of women prove their claim.³²⁸

However, third-party testimony is still insufficient. Even the majority approach likely eliminates the possibility of establishing good cause for approximately half of the women with valid claims, because women often choose never to confide in anyone about their experience.³²⁹ Women may particularly want to hide their experience from people they are closest to, fearing that their loved ones may reject or stigmatize them should they choose to divulge.³³⁰ Therefore, additional evidentiary provisions are required to deal with this gap in protection.

In adopting a solution, the victim's interest must be balanced by the state interest and the importance of establishing child support. Child support enforcement provides both funding for the state and comfort for the child.³³¹ Fostering parent-child relationships and requiring that absent parents fulfill financial responsibilities to their children is a worthy governmental and familial interest.³³² However, easing the evidentiary requirement for women who are compromised by cooperation would likely not significantly hinder these interests.

Allowing applicant corroboration to fulfill the evidentiary requirement would protect women with valid claims, but would not provoke additional claims.³³³ Generally, false rape claims are extremely rare in any context.³³⁴ Additionally, false claims that are registered typically do not target a specific person, but merely describe an unknown perpetrator in a general way and likely indicate the claimant is mentally ill.³³⁵ Rape claims registered to merit good cause necessarily identify a perpetrator, and

323. See generally discussion *supra* Part II.A.3.

324. See *supra* Part III.B.

325. See *supra* Part III.C.

326. See *supra* Part III.C.

327. See *supra* note 159 and accompanying text.

328. See *supra* note 159 and accompanying text.

329. See *supra* note 159 and accompanying text.

330. See *supra* notes 170–72 and accompanying text.

331. See *supra* Part I.B.3.a.

332. See *supra* Part I.B.3.a.

333. See *supra* note 149 and accompanying text.

334. See discussion *supra* Part II.B.4.

335. See *supra* note 214 and accompanying text.

therefore, false claims would be uncharacteristic and less likely in this forum.³³⁶ Thus, allowing applicant corroboration would benefit the women who good cause is designed to help, without creating an influx of untrustworthy assertions to burden the welfare system.

A psychological report that indicates the woman's distress following rape and her fear of being reconnected and tormented by her rapist should also be considered.³³⁷ Rape victims often suffer serious psychological distress, and their symptoms are usually closely tied to triggers from their rape experience.³³⁸ Permitting such evaluations to be considered would allow health practitioners to corroborate the rape and would provide official records without stressing the importance of documentation collected at the time of the rape. Therefore, inclusion of psychological consideration both helps the women satisfy good cause and provides the welfare agency with formal corroboration.

The good cause exception is in place to protect women who would be harmed by cooperating with child support requirements.³³⁹ However, this protection is illusory if evidentiary requirements are not sensitively designed with the difficulties of official corroboration in mind. Benefits recipients who are pursuing a good cause exception are in the best position to corroborate their own experiences. Therefore, a modified minority permissive approach incorporating consideration of psychological documentation should be adopted.

CONCLUSION

States require various evidentiary standards under TANF for applicants to merit a good cause exception from child support enforcement cooperation. The majority of states permit official documentation and third-party statements. Some states take a minority approach that includes applicant corroboration in its evidentiary standard, while another minority of states instituted a restrictive view that eliminates third-party statements from consideration. To properly protect rape victims who are seeking welfare benefits for a child conceived during rape from the danger of being bound to their rapists by child support enforcement, states must craft evidentiary requirements that are compatible with victim behavior following sexual assault. Therefore, the minority permissive approach should be adopted, along with provisions accepting psychological documentation, as this standard preserves the integrity of child support enforcement while providing rape victims with realistic safeguards.

336. *See supra* note 214 and accompanying text.

337. *See supra* notes 317–19 and accompanying text.

338. *See discussion supra* Part II.C.

339. *See discussion supra* Part I.A.2.a.