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Why New Hampshire Must Update Rape Shield Laws

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Additional Information

This article originally appeared in the Concord Monitor.

MY TURN

Why the state must update rape shield laws

If we want sexual assaults to be reported, we must protect victims' privacy

By **AMY VORENBERG**
For the Monitor

Bill O'Reilly of Fox News, the top-rated cable news host, lost his job due to mounting outrage from viewers and advertisers regarding his apparent history of sexually harassing female co-workers.



Vorenberg

research indicates that New Hampshire has some of the highest rates of sexual assault in the nation; nearly one in four New Hampshire women and one in 20 New Hamp-

Hopefully, this is a sign that we are taking all manners of sexual harassment, sexual assault and rape more seriously. Yet sexual assault remains depressingly common. Recent

shire men will experience sexual assault.

Although reporting a crime can be hard for anyone, sexual assault victims have particular reasons for not reporting. After an assault, a rape victim typically feels embarrassment, shame and fears reprisal (most of these crimes are committed by an acquaintance). The deeply personal nature of rape makes it uniquely traumatizing and confusing.

Recognizing the special psychology of rape victims, many New

Hampshire police and prosecutors have developed outstanding victim support programs or procedures, yet the victim still must overcome their natural reticence to describe their private suffering to an official who, though hopefully trained in conducting rape victim interviews, is unknown to the victim.

This fear of embarrassment and shame is felt not just by victims, but by their families who naturally worry about their loved one's health and the possibility of negative reper-

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Rape shield laws need updating

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cussions from their community.

Years ago, early victims' rights advocates pushed legislatures to change laws to protect victims from having their private sexual lives publicly exposed during the criminal process.

Before these "rape shield" laws were enacted, a victim's private activities – those unrelated to the defendant – could be used by defense attorneys to call into question a victim's reputation and thus her motives for bringing charges. "Unchaste" victims were considered less truthful and thus perpetrators were free to use a victim's reputation against him or her – even if the evidence was inaccurate.

Most states, including New Hampshire, now have a rape shield law that prevents this kind of character attack, but with the advent of social media, there are now new ways for perpetrators to make a victim's reputation part of the legal record. We need to update our rape shield law to keep up with these new methods.

The New Hampshire Legislature is currently considering a law that would do just that, by broadening the definition of what constitutes "sexual activity." The new definition would include not just previous sexual conduct but also a person's expressions, whether they be photos, chats, text messages, posts, tweets, etc.

Other states have taken this important clarifying step.

This is needed now because so much is captured on social media, including victims' opinions and ideas about sex – none of which is appropriate or relevant in the criminal process.

In addition, court proceedings involving sexual assaults have become fodder for news-hungry broadcasters and publishers. Technology has expanded the reach of the evidence that emerges in a trial (through tweeting, for example), creating a heightened need for the protection of victim privacy.

Currently judges in these cases have to arrive at their own definition of what evidence is admissible. The additional law will thus bring important consistency and uniformity to these trials – a key reason that other states have passed such legislation.

Nothing in the proposed bill changes the existing law that allows a defendant to introduce evidence of activity between the defendant and the victim. Moreover, the law leaves unchanged the defendant's clear constitutional right to request that all relevant information about his or her relationship with the victim be considered. Indeed, de-

fendants can still request that evidence covered under the rape shield law be admitted in a trial if they can show that exclusion would violate their constitutional rights.

Updating our rape shield laws would provide needed protection to victims whose decision whether to report this crime may well hinge on their fear of having their private life exposed. No one who has been victimized sexually should have to worry that confronting an attacker could mean putting their private life on public display.

If we as a community of citizens and lawmakers are serious about reducing sexual assault, then we should do what we can to make a victim's decision to report this crime less perilous by protecting the privacy all of us deserve.

(Amy Vorenberg is a former prosecutor, defense lawyer and member of the N.H. Parole Board. She is currently a law professor and board member of the New Hampshire Coalition Against Domestic and Sexual Violence. As a teen, she was the victim of a serial rapist who attacked more than 40 women in the Boston area.)