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I. INTRODUCTION: STATUTORY RAPE AND THE MALE VICTIM

In September of 2014, *USA TODAY* released the story of Nick Olivas who was ordered to pay child support, including retro-active support, for a daughter whom he did not know existed for six years; she was conceived in Arizona when he was just fourteen years old and the mother was twenty.[1] According to Arizona law, it is a crime to engage in sexual activity with a minor under the age of fifteen.[2] Olivas never pressed charges because "he didn't realize at the time that it was even something to consider."[3] According to a *USA TODAY* statistic, as of January 24, 2015, Olivas' story was the eighth most viewed article on *USA TODAY's* website, with sixty-four reader comments offered in response.[4] It is apparent that the issue of a victim of statutory rape being ordered to pay child support is intriguing to many people. Despite the recent attention this issue is receiving, this is not a new phenomenon. Cases dating back to 1961 have addressed the issue of how to handle child support liability when the father is the victim of statutory rape.[5]

Although not the legal term, statutory rape is the common pseudonym for crimes that involve sexual activity between a minor and

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[1] Alia Beard Rau, *Statutory Rape Victim Forced to Pay Child Support*, USA TODAY (Sept. 3, 2014), *available at* http://www.usatoday.com/story/news/nation/2014/09/02/statutory-rape-victim-child-support/14953965/ (last visited Dec. 1, 2015) (Originally published at http://www.azcentral.com/story/news/arizona/politics/2014/09/02/arizona-statutory-rape-victim-forced-pay-child-support/14951737/).

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] Schierenbeck v. Minor, 148 Colo. 583 (1961).

an adult.[6] Though most may think of young girls and older men in these scenarios, adolescent boys are victims of these crimes as well. Relationships involving older women and younger boys have appeared in various news reports.[7] One such report involved a Lakeland, Florida teacher, Jennifer Fichter, who became sexually involved with her male students.[8] However, female teachers are not the sole perpetrators of these crimes. Analyzing data provided by the Federal Bureau of Investigation, the U.S. Department of Justice reported in 2005 that five percent of statutory rape victims were males between the ages of seven and seventeen, with twenty-nine percent of the victims being fifteen years old.[9] Additionally, of the offenders in cases of statutory rape on males, ninety-four percent were female and seventy percent were age twenty-one or older.[10]

Scenarios of young boys and older women have often been depicted in movies such as *Class*,[11] *Harold and Maude*,[12] *The Reader*,[13] and *The Boy Next Door*.[14] Released in January 2015, the *Boy Next Door* is about a high school boy's mother who has a sexual encounter with her son's schoolmate who lives across the street. As in many of the movies depicting sexual relationships between boys and older women,[15] the young male in *The Boy Next Door* is made to be the aggressor, with the main plot of the movie revolving around the obsession he develops for the mother living next door.[16]

Hollywood is not alone in its characterization of male statutory rape victims as non-victims. The courts' decisions in these cases reveal a perception that young males who have sex with older women are eager and willing participants, thus, they must financially support any children

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[6] OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, DEP'T OF JUSTICE, JUVENILE JUSTICE BULL. NO. 208803, *Statutory Rape Known to Law Enforcement* (Aug. 2005) [herein referred to as O.J.J.D.P], *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/208803.pdf (last visited Dec. 1, 2015).

[7] Ryan Raiche, *Teacher Jennifer Fichter Charged with Having Sex with Third Student*, ABC ACTION NEWS (WFTS Tampa Bay), June 5, 2014, *available at* http://www.abcactionnews.com/news/region-polk/teacher-jennifer-fichter-charged-with-having-sex-with-third-student (last visited Dec. 1, 2015).

[8] *Id.*

[9] O.J.J.D.P., *supra* note 6.

[10] O.J.J.D.P., *supra* note 6.

[11] CLASS (Orion Pictures 1983).

[12] HAROLD AND MAUDE (Paramount Pictures 1971).

[13] THE READER (Mirage Enterprises 2008).

[14] THE BOY NEXT DOOR (Universal Pictures 2015).

[15] *See generally Older Women Younger Man Hot Whole Movies*, IMDB.COM, http://www.imdb.com/list/ls070061866/ (last visited Dec. 1, 2015) (Lists several plot lines of movies relating to these relationships).

[16] THE BOY NEXT DOOR, *supra* note 14.

which result from the illegal sexual encounters. In these cases, the rights of these male victims are given last priority. The resultant child's right to support from the parent is seen as paramount, and female victims have the opportunity to avoid parenthood through abortion or adoption, which are not options available to male victims.[17]

The purpose of this note is to address the contradictory nature of holding male victims of statutory rape liable for child support and to propose a way of handling these cases that would take the male victims' rights into consideration. Part II will include a discussion of the background and evolution of the relevant laws. Part III will introduce some of the rulings courts have reached on this issue and their reasoning. Part IV will examine the idea of consent, and provide a closer look at the effects that this practice has on the male victims. Finally, Part V will present the policy recommendation of allowing these male victims to terminate their parental rights and responsibilities if they so choose.

II. BACKGROUND OF STATUTORY RAPE LAWS

Today, all states have adopted laws that are characterized as statutory rape laws.[18] The age of consent and provisions addressing age differentials between victims and offenders vary by state, but the majority of states set the age of consent at sixteen.[19] Most of the statutes are now gender neutral, affording protection to minor females as well as males.[20] Gender neutrality was not always the norm in statutory rape laws and the purposes behind these laws have also changed over time.[21]

The *Statute of Westminster of 1275* was the first codified English statutory rape law.[22] Originally, these laws were intended to protect the chastity of young girls because they were deemed property of their fathers until they were married and became property of their husbands.[23] The focus was not on the consequences to the victimized girl, but rather on the father's financial interests because a non-virgin was less valuable upon marriage or risked never being married, thus becoming the life-long

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[17] *See infra* Part III and Part IV.C.
[18] Asaph Glosser et al., *Statutory Rape: A Guide to State Laws and Reporting Requirements*, 5-9 (Dec. 15, 2004), *available at* http://aspe.hhs.gov/hsp/08/sr/statelaws/summary.shtml (last visited Dec. 1, 2015) (Prepared for U.S. Dep't of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation).
[19] *Id.*
[20] *Id.*
[21] *See infra* notes 22-38 and accompanying text.
[22] Michelle Oberman, *Girls in the Master's House: Of Protection, Patriarchy and the Potential for Using the Master's Tools to Reconfigure Statutory Rape Law*, 50 DEPAUL L. REV. 799, 800-01 and n.2 (2001).
[23] *Id.* at 802-03.

financial responsibility of her father.[24] Under these early laws, persuasive and forceful sexual relationships with young girls were equally punishable.[25]

Statutory rape laws became a part of American common law along with the rest of English common law.[26] Although these laws initially established the age of consent to be ten years old, by the beginning of the twentieth century, the average age of consent was raised to sixteen.[27] Some say this change is reflective of a shift from the idea that young girls were unable to legally consent to the theory that these girls needed to be protected from even consensual, non-marital sexual intercourse.[28] Interestingly, the focus on protection of the sexuality of young women is what prompted the 1970's "second wave" feminists to seek gender neutrality in statutory rape laws.[29] They believed that statutory rape laws furthered gender stereotypes and threatened the sexual autonomy of young women, but they also understood the critical importance of protecting young individuals from sexual coercion.[30] In November of 1979, the Supreme Court of California heard the case of *Michael M. v. Superior Court*, in which Michael sought a writ of prohibition to have his conviction for statutory rape dismissed, claiming that the California statute violated the Equal Protection Clause of the Constitution because it discriminated on the basis of gender.[31] The court denied the writ of prohibition determining it was not unconstitutional to provide protection to only females because there were other statutes such as "contributing to the delinquency of a minor," to protect males.[32] Additionally, the court determined the statute was constitutional because the purpose of the statute was to prevent illegitimate teenage pregnancies, from which only female victims could suffer.[33] The Supreme Court of the United States

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[24] *Id.*
[25] *Id*. at 801.
[26] *Id*. at 803.
[27] *Id.*
[28] Anthony M. Amelio, *Florida's Statutory Rape Law: A Shield or A Weapon? - A Minor's Right of Privacy Under Florida Statutes § 794.05,* B.B. v. State, 659 So. 2d 256 (Fla. 1995), 26 STETSON L. REV. 407, 410-11 (1996).
[29] *See* Oberman, s*upra* note 22, at 803.
[30] Oberman, s*upra* note 22 at 803.
[31] Michael M. v. Superior Court, 25 Cal. 3d 608, 610 (1979), *aff'd sub nom.* Michael M. v. Superior Court of Sonoma Cnty., 450 U.S. 464 (1981).
[32] *Id.*
[33] *Id.* at 610.

affirmed the decision in March of 1981.[34] Despite the Court's holding, most jurisdictions adopted gender neutral statutes during the 1980s.[35]

The emphasis on preventing teenage pregnancy was reiterated in the 1990's, when studies revealed that an alarming number of babies born to teen mothers were fathered by adult men.[36] Studies also showed that teenage mothers were more likely to utilize public assistance; therefore, the adult fathers cost states millions of dollars in public assistance funds.[37] These findings led to policies that encouraged prosecution in statutory rape cases with an emphasis on those cases with a wide age gap between the victims and offenders.[38]

Florida's first statutory rape law, Florida Statute § 2598, appeared in 1892 and allowed for a death sentence.[39] Different versions of the 1892 statute were in effect until replaced in 1975 by the Sexual Battery statute, Florida Statute § 794.011.[40] Judge W. Sharp noted in his concurrence in *Jones v. State,* "Florida has long adhered to a policy of protecting minors from sexual exploitation and abuse."[41] He further stated that in 1943 the Florida Legislature expanded its policy of protection by enacting Florida Statue § 800.04, which prohibits lewd and lascivious activity with minors under sixteen.[42] Currently, Florida Statutes § 800.04 and § 794.05 are the controlling statutory rape laws in Florida.[43] Section 800.04 reads in pertinent part:

> (2) Prohibited defenses. Neither the victim's lack of chastity nor the victim's consent is a defense to the crimes proscribed by this section.
>
> …
>
> (4) Lewd or lascivious battery.
>
> (a) A person commits lewd or lascivious battery by:

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[34] *Michael M.,* 450 U.S. at 476.
[35] Ruth Jones, *Inequality from Gender-Neutral Laws: Why Must Male Victims of Statutory Rape Pay Child Support for Children Resulting from Their Victimization?*, 36 GA. L. REV. 411, 430-31 (2002).
[36] Oberman, s*upra* note 22, at 808-09.
[37] Oberman, s*upra* note 22, at 808-09.
[38] Oberman, s*upra* note 22, at 809.
[39] Jones v. State, 619 So. 2d 418, 424 (Fla. Dist. Ct. App. 1993) *approved* 640 So. 2d 1084 (Fla. 1994).
[40] *Id.*
[41] *Id.* at 423.
[42] *Id.* at 424.
[43] FLA. STAT. ANN. §§ 800.04, 794.05 (West 2014).

> 1. Engaging in sexual activity with a person 12 years of age or older but less than 16 years of age; or
>
> 2. Encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.
>
> (b) Except as provided in paragraph (c), an offender who commits lewd or lascivious battery commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.[44]

Section 794.05 provides additional protection for children who are sixteen or seventeen years old against sexual activity with adults who are twenty-four years or older and states:

> (1) A person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this section, "sexual activity" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.
>
> …
>
> (4) If an offense under this section directly results in the victim giving birth to a child, paternity of that child shall be established as described in chapter 742. If it is determined that the offender is the father of the child, the offender must pay child support pursuant to the child support guidelines described in chapter 61.[45]

Clearly, Florida is still concerned with protecting young people from sexual activity with an emphasis on those encounters where the victim is much younger than the offender.

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[44] FLA. STAT. ANN. § 800.04 (West 2014).
[45] FLA. STAT. ANN. § 794.05 (West 2014).

III. COURT RESPONSES TO MALE VICTIMS/FATHERS

When faced with cases seeking child support from male victims of statutory rape, courts have repeatedly held the male victims liable.[46] In the first line of its opinion, *County of San Luis Obispo v. Nathaniel J.,* the court opined, "[v]ictims have rights. Here, the victim also has responsibilities."[47] As determined by the Fifth District Court of Appeals of Florida in *Department of Revenue v. Miller*, "[Fla. Stat. § 794.011(8)(b)] does not create a defense for minor putative fathers in paternity actions."[48] In these cases, the courts have determined that the crime of statutory rape is irrelevant to a paternity and child support case.[49]

One justification given by many courts for finding that the crime is irrelevant is that the right of the resultant children to receive support outweighs any policy to protect minors from sexual encounters.[50] The Court of Appeals of Kentucky has noted, ". . . this state's strong public policy requiring fathers to support their out-of-wedlock children must take preference over any policy which may be embodied in our statutory rape legislation to protect the victims of such crimes. . . ."[51] Likewise, the Third District Appellate Court of Illinois has determined that public policy of mandated child support "overrides" policies of protecting minors against "improvident acts."[52]

Another, and perhaps the most concerning reason many courts have given is that the boys/fathers are willing participants, not victims.[53] In *Jevning v. Cichos*, the father was a fifteen-year-old boy and the mother was a twenty-year-old woman.[54] The Court of Appeals of Minnesota referred to the boy on numerous occasions using the term "victim" in quotation marks and said, "[i]t is hard to characterize appellant as the classic innocent victim of a crime."[55] The Supreme Court of Kansas used the same approach in *State ex rel. Hermesmann v. Seyer*, a case in which the thirteen-year-old male victim's babysitter became pregnant and was adjudicated for a lessor crime of contributing to a child's misconduct.[56]

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[46] *See* cases cited *infra* notes 47-66 and accompanying text.
[47] *Cnty. of San Luis Obispo v. Nathaniel J.*, 57 Cal. Rptr. 2d 843, 843 (Cal. Ct. App. 1996).
[48] *Dep't of Revenue v. Miller*, 688 So.2d 1024, 1025 (Fla. Dist. Ct. App. 1997).
[49] *See* cases cited *infra* notes 47-66 and accompanying text.
[50] *See* cases cited *infra* notes 51-52 and accompanying text.
[51] *Commonwealth ex rel. Rush v. Hatfield*, 929 S.W.2d 200, 202 (Ky. Ct. App. 1996).
[52] *In re* Parentage of J.S., 550 N.E.2d 257, 259 (Ill. App. Ct. 1990).
[53] State *ex rel.* Hermesmann v. Seyer, 847 P.2d 1273, 1279 (1993).
[54] *Jevning v. Cichos*, 499 N.W.2d 515, 515 (Minn. Ct. App. 1993).
[55] *Id.* at 515-16.
[56] *Hermesmann*, 847 P.2d at 1274.

The court in *Hermesmann* referred to the resultant child as ". . . the only truly innocent party. . . ."[57] Similarly, in *Nathanial J.*, where the victim was a fifteen-year-old boy and the offender was a thirty-four-year-old woman, the Second District Courts of Appeals of California determined, "[t]he law should not except Nathaniel J. from his responsibility because he is not an innocent victim of Jones's criminal acts."[58] The court went on to find that the victim and offender "decided" to have sex.[59] In *In re Paternity of J.L.H.*, the victim said that the sex was non-consensual and that he suffered from psychosis and was unable to support himself because of the sexual assault.[60] Nevertheless, the court held him liable for support, finding that he had not made a showing to support the assertion that the sexual encounter was non-consensual, and that his psychiatric issues were to be considered only as it pertained to child support amounts.[61]

The Fifth District Court of Appeals of Florida adopted the reasoning of the courts in *Hermesmann* and *Paternity of J.L.H.* in its case of first impression, *Department of Revenue v. Miller*.[62] Bennett was a twenty-year-old woman who was living with fifteen-year-old Miller and his family when conception occurred.[63] The trial court originally dismissed the petition for paternity, holding that Miller could not be financially liable because he was a victim of sexual battery.[64] The appellate court reversed, however, finding that the trial court erred because the sexual battery statute was not related to child support.[65] In its opinion, the court noted that neither it nor the cases it relied upon had addressed the issue of whether "actual nonconsent" could be a defense in a paternity proceeding.[66]

On the one hand, courts are determining that the issue of consent is irrelevant in these civil proceedings, but on the other hand they are saying that the minor fathers are willing participants and situations of *nonconsensual* sex are not being discussed.[67] Obviously, the issue of consent is relevant and the courts have decided, even when the fathers stated otherwise, that they were capable of and did consent.

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[57] *Id.* at 1279.
[58] *Nathaniel J.*, 57 Cal. Rptr. 2d at 843-45.
[59] *Id.* at 845.
[60] *In re* Paternity of J.L.H., 149 Wis. 2d 349, 355 (Wis. Ct. App. 1989).
[61] *Id.* at 360.
[62] *Miller*, 688 So.2d at 1026.
[63] *Id*. at 1025.
[64] *Id.*
[65] *Id.*
[66] *Id.* at 1026.
[67] *See Dep't of Revenue v. Miller*, 688 So.2d 1024, 1026 (Fla. Dist. Ct. App. 1997); *see also State ex rel. Hermesmann v. Seyer*, 847 P.2d 1273, 1277 (1993).

IV. THE COURTS ARE DOING THESE MALE VICTIMS AN INJUSTICE

When making decisions in cases seeking child support from male victims of statutory rape, the courts are relying heavily on the fact that these males are not considered victims because they "consented" to sex.[68] This idea is not only contradictory to what scientific studies have shown about adolescent psychological development,[69] but also to what many other areas of the law have already recognized about the decision-making skills of minors.[70] By relying so heavily on the consent facet, the courts holding these minors liable for support are largely ignoring the discriminatory and negative effects this practice has on male victims.[71]

A. "Consent" is Not Always Consent

Scientific studies have shown that minors do not possess the same decision making abilities as adults.[72] Furthermore, what may be seen as consent by a minor may be more akin to acquiescence.[73] Children generally enter puberty and begin to undergo significant physical, cognitive, and psychological changes between the ages of ten and fourteen.[74] An important physical change is the doubling of the gray matter of the brain, which enables high cognitive functioning—typically peaking around age seventeen in boys.[75] The frontal cortex of the brain controls regulation of emotions, impulse control, and planning, and continues to develop through young adulthood.[76] It is generally accepted that an immature frontal cortex is at least partially responsible for the tendency of adolescents to engage in more risky behaviors.[77] Other areas of the brain, which control decision-making, social skills, and problem solving, also continue to develop throughout adolescence.[78]

Studies suggest that adolescents differ cognitively from adults in that they are more concerned with conformity, have an exaggerated sense of emotions, and believe that negative influences cannot affect them.[79]

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[68] *See* cases cited *supra* notes 54-66 and accompanying text.
[69] *See infra* Part IV.A.
[70] *See infra* Part IV.A.
[71] *See infra* Part IV.A-C.
[72] Jennifer Ann Drobac, *"Developing Capacity": Adolescent "Consent" at Work, at Law, and in the Sciences of the Mind*, 10 U.C. DAVIS J. JUV. L. & POL'Y 1, 12 (2006).
[73] *Id*.
[74] *Id.* at 11-12.
[75] *Id.* at 13.
[76] *Id.* at 14.
[77] *Id.*
[78] Drobac, *supra* note 72, at 15.
[79] Drobac, *supra* note 72, at 24-25.

Psychological research has shown that adolescents tend to be more influenced by others and display more impulsive and "sensation-seeking behavior" than adults.[80] The tendency to be heavily influenced by others was evidenced in a 2000 Kaiser Family Foundation and Seventeen Magazine survey of 510 teens, in which forty-five percent of the respondents chose "other person wanted to" as a "major reason" for having sex for the first time.[81] It is not just teenage girls who are being influenced by others to have sex.[82] A 2003 Kaiser Family Foundation study further revealed that eighteen percent of males reported having engaged in sexual activity when they did not actually want to, and eighty-six percent of twelve to seventeen-year-old participants reported facing "some" or "a lot" of pressure to have sex.[83]

The Supreme Court discussed these developmental differences at length in *Roper v. Simmons*, a case which challenged the constitutionality of imposing the death penalty on juveniles.[84] The Court conceded the fact that juveniles are less mature, more reckless, more susceptible to negative influences, and have more transitory personalities than adults.[85] In light of these facts the Court held "[t]he differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability."[86]

When Florida Statute § 800.04 faced a constitutionality challenge in *Jones v. State,* the Florida Supreme Court also recognized the physical and psychological developmental processes of minors in finding that Florida was obligated to protect minors from sexual activity before their minds and bodies are mature enough for it to be healthy and safe.[87] Additionally, the Court acknowledged the doubtfulness of a minor's consent and said, "[w]e are of the opinion that sexual activity with a child opens the door to sexual exploitation, physical harm, and sometimes psychological damage, regardless of the child's maturity or lack of chastity."[88] In his strong concurrence, Justice Kogan addressed

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[80] Drobac, *supra* note 72, at 29.
[81] Drobac, *supra* note 72, at 41-42.
[82] Tina Hoff et al., NATIONAL SURVEY OF ADOLESCENTS AND YOUNG ADULTS: SEXUAL HEALTH KNOWLEDGE, ATTITUDES AND EXPERIENCES, 8 (2003), *available at* https://kaiserfamilyfoundation.files.wordpress.com/2013/01/national-survey-of-adolescents-and-young-adults.pdf (last visited Dec. 1, 2015).
[83] *Id.*
[84] *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005).
[85] *Id*.
[86] *Id.* at 572-73.
[87] *Jones v. State*, 640 So. 2d 1084, 1086 (Fla. 1994).
[88] *Id.* at 1087 (quoting Schmitt v. State, 619 So. 2d 404, 424 (Fla. 1991).

the question of whether children and adolescents can consent to sex.[89] He expressed deep concern that deciding children and adolescents can consent leads to a "slippery slope of the worst magnitude" and that it will create a "convenient smoke screen for a predatory exploitation of children and young adolescents."[90] Citing to a scientific study, which supports the fact that adolescents do not think like adults, Kogan pointed out that without accounting for the psychological differences, sexual exploitation may appear to be consensual from an adult perspective.[91] The appearance of consent can be enhanced when a child or adolescent—due to fear, shame, coercion, or the belief that they must obey adults for example—does not report the abuse or later retracts the claim of exploitation.[92] The concept of *consent* in cases of male victimization is especially troubling when considering that victimized boys may often think of themselves as guilty and, due to a natural desire to preserve feelings of masculinity, are not able to admit that they lost control and were victimized.[93] As stated by author and psychologist Mic Hunter, and quoted by Justice Kogan:

> In many cases, the duration and nature of sexual encounters between a male child and his perpetrator bear the external trappings of consensual contact. Like a veil, the notion of consent conceals the underlying coercion and manipulation experienced by the victim. Loss of control, or being overpowered … may be emotionally inaccessible or inapplicable to male victims. The dynamic of vulnerability lies outside the emotional vocabulary of many "normal" males.[94]

The idea that these male victims of statutory rape consented to the sexual intercourse is entirely contradictory to not only the structure of the statutory rape laws themselves,[95] but also to discussions and policies relating to minors in many other areas of the law.[96] Restrictions on the minimum age for voting,[97] jury duty,[98] marriage,[99] and application of the

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[89] *Id.* at 1088-91.
[90] *Id.* at 1088-89.
[91] *Id.* at 1090 (citing Roland C. Summitt, *The Child Sexual Abuse Accommodation Syndrome*, 7 CHILD ABUSE & NEGLECT 177 (1983)).
[92] *Id.*
[93] *Jones*, 640 So 2d 1084, 1090-91 (Kogan, J. concurring) (citing MIC HUNTER, THE SEXUALLY ABUSED MALE, VOL. 1 PREVALENCE, IMPACT, & TREATMENT, 79 (Jossey-Bass, 1st ed. 1990)).
[94] *Id.* at 1090 (quoting HUNTER, *supra* note 93).
[95] *See generally* FLA. STAT. ANN. § 800.04(2) (West 2014) (consent is not a defense).
[96] *See infra* notes 97-101 and accompanying text.
[97] FLA. STAT. § 97.041 (2009). (minimum age of eighteen).
[98] FLA. STAT. § 40.01 (2003). (minimum age of eighteen).

death penalty[100] are all rooted in the fact that minors do not have the same decision making capacity as adults.[101]

A minor's diminished capacity to consent is also considered in civil settings such as contract law where contracts made with minors are voidable.[102] This fact is also acknowledged by courts who hold that liability waivers signed by minors are voidable.[103] In *Dilallo v. Riding Safely*, a thirteen-year-old girl signed a liability waiver before being injured while horseback riding.[104] The trial court found that the girl had assumed the risk after she signed the written release, but the appellate court reversed holding, "we adopt the rationale of *Byrne* in order to effectuate this state's policy of protecting minors. We now hold that a minor child injured because of a defendant's negligence is not bound by her contractual waiver of her right to file a lawsuit."[105]

In light of the scientific findings and legal recognition of the limited capacity of adolescents to make decisions, it seems counter-intuitive to then suggest that male victims of statutory rape consent to the illegal sexual intercourse that forces them into fatherhood.

B. Teenage Fatherhood Can Have Negative Effects on Male Victims

There has been little research conducted on how males are affected by teenage fatherhood; however, that which has been conducted tends to show a negative impact on the economic and social affairs of teenage fathers.[106] The Department of Justice has taken note of the negative effects that teenage fatherhood can produce.[107] In February of 2000, the Department of Justice issued a news release entitled *Teenage Fatherhood Increases Likelihood of Juvenile Delinquency*, which discussed two studies conducted in Rochester, New York and Pittsburgh,

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[99] FLA. STAT. § 741.04(1) (2004). (minimum age of eighteen with some exceptions under §741.0405).
[100] Roper v. Simmons, 543 U.S. 551 (2005).
[101] *Id.* at 569.
[102] 5 WILLISTON ON CONTRACTS § 9:5 (4th ed. 2015).
[103] *Dilallo v. Riding Safely, Inc*., 687 So. 2d 353-57 (Fla. Dist. Ct. App. 1997).
[104] *Id.* at 354.
[105] *Id.* at 357.
[106] Jones, s*upra* note 35, at 463 n.9. ("There has been limited research on unwed fathers but the available research suggests that becoming an unwed father limits the future economic opportunities of the male parent."); *see also* Press Release, Teenage Fatherhood Increases Likelihood of Juvenile Delinquency, Department of Justice, Office of Justice Programs (Feb. 3, 2000) *available at* http://ojp.gov/archives/pressreleases/2000/ojp000203.html;Teen Parent Graduation and College Achievement Act, H.R. 5460, 111th Cong. (2009).
[107] Press Release, *supra* note 106.

Pennsylvania.[108] The studies found there was a thirty-one percent higher incident of court petitions alleging delinquency for teenage fathers than non-fathers.[109] Additionally, there was a twenty-percent increase in both frequent alcohol use and drug dealing and a twenty-three percent increase in school dropout rates for teenage fathers.[110] Speaking about these findings, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) administrator Shay Bilchick said, "'…fatherhood can exacerbate an already troubled and stressful life, making a bad situation worse….'"[111]

The Department of Justice is not alone in its acknowledgement of the negative repercussions parenthood can have on teenage males. In 2010, Congress proposed the Teen Parent Graduation and College Achievement Act, which was intended to establish grant programs to help keep pregnant and parenting students in school.[112] The congressional findings included the facts that teenage fathers completed an average of one less semester of high school, that pregnancy and parenting interfered with the attainment of a college degree, and that fewer economic opportunities were available to teenage parents.[113]

C. There Are Options Available to Female Victims but Not to Male Victims

While female victims of statutory rape have the opportunity to avoid the financial responsibility of raising a resultant child by either placing the child up for adoption[114] or having an abortion,[115] these options are not available to male victims. In 1989, the Florida Supreme Court found in *In re T.W.*, that the then-existing parental notification provision of the Florida abortion statute was unconstitutionally vague.[116] The Court pointed to the fact that Article I § 23 of the Florida Constitution specifically guarantees an independent right to privacy.[117] The Court further determined that the words "every natural person" in the aforementioned section included minors.[118] Therefore, in order to

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[108] *Id.* at 1.
[109] *Id.* at 6.
[110] *Id.*
[111] *Id.*
[112] Teen Parent Graduation and College Achievement Act, *supra* note 106.
[113] *Id.*
[114] FLA. STAT. ANN. § 63.062 (West 2012).
[115] FLA. STAT. ANN. §§ 390.0111, 390.01112 (West 2014).
[116] *In re* T.W., A Minor, 551 So.2d 1186, 1188 (Fla. 1989) (Discussing FLA. STAT. § 390.001 (4)(a) (1988). The statute has since been annotated in FLA. STAT. ANN. § 390.0111 (West 2015).
[117] *Id.* at 1190-92.
[118] *Id.* at 1192-93.

interfere with a minor's right to privacy, the State must show there is a compelling state interest and that the means employed to reach its objectives are the least restrictive.[119] Additionally, the Court cited to *Roe v. Wade* in which the Supreme Court of the United States recognized an individual privacy right in decisions relating to "marriage, procreation, contraception, family relationships, and child rearing and education."[120] Holding that a minor woman's right to an abortion prior to viability is a protected privacy right, the Florida Supreme Court again cited to *Roe v. Wade*, "[t]he decision whether to obtain an abortion is fraught with specific physical, psychological, and economic implications of a uniquely personal nature for each woman."[121] While a parental notification provision continues to exist in Florida, there is a waiver process through which pregnant minors may receive an abortion without obtaining parental consent.[122]

Although the holding of *In re T.W.* may seem inapplicable to male victims of statutory rape due to their biological inability to abort resultant babies, much of the Court's reasoning could carry over. Since the Florida Constitution guarantees a privacy right[123] that the Supreme Court of the United States has held includes decisions regarding child-rearing,[124] and because there are "psychological and economic" implications for teenage fathers,[125] shouldn't these male victims be provided with at least one meaningful choice in these cases?

In Florida, a father may voluntarily relinquish his parental rights, but only if certain conditions are met.[126] Florida Statute § 39.806, which deals with the termination of parental rights, allows for voluntary termination if both parents sign the child over to the state or if someone is willing to adopt the child.[127] The statute also lists several reasons for the State to terminate parental rights, but they largely apply to involuntary termination and include offenses such as murder and repeated child abuse.[128] The statute does include some sexual battery offenses as grounds for termination, but neither of the statutory rape statutes are included.[129] Under these conditions, a father would have to

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[119] *Id.*
[120] *Id.* at 1191-92 (citing Roe v. Wade, 410 U.S. 113, 152-53 (1973)).
[121] *Id.* at 1193 (citing *Roe*, 410 U.S. at 153).
[122] FLA. STAT. § 390.01114 (2013).
[123] FLA. CONST. art. I, § 23.
[124] *See* Teen Parent Graduation and College Achievement Act, s*upra* note 106.
[125] *See supra* Part IV. B.
[126] *See* FLA. STAT. § 39.806 (2013).
[127] *Id.*
[128] *Id.*
[129] *See* FLA. STAT. § 39.806(1)(m)&(n) (2013); *see also* FLA. STAT. §794.011 (2014) (Sexual Battery), FLA. STAT. §775.21 (2015) (Sexual Predators).

either convince the mother to also give up parental rights, hope the mother finds a partner willing to adopt the child in his place, or engage in egregious behavior in order to terminate his parental rights.[130]

Male victims' rights are being practically ignored by Florida and every other state that has ordered them to pay child support for the resultant children. Statutes exist that are supposed to protect both female and male victims,[131] but in reality, when pregnancy results from statutory rape, only female victims are being protected against the undesirable ramifications.

V. RECOGNIZING THE RIGHTS OF MALE VICTIMS BY PROVIDING A MEANINGFUL CHOICE

In order to balance the rights of all parties involved in cases where female statutory rape offenders become pregnant as a result of the offense, male victims should be given the option to terminate their parental rights and responsibilities. This approach gives male victims an option that is equivalent to those of abortion or adoption, which are available to female victims in these scenarios. Although this option will mean that the victims do not have to pay child support, it is not without recompense, because they must also surrender any parental rights. The right of the resultant child to financial support is not forsaken because if the mother's income does not exceed the state's public assistance income limits, they will still be supported through public assistance. In Florida, a family can earn up to 200 percent of the federal poverty line (after certain expenses such as child care and housing) and still be eligible to receive food assistance.[132]

One opposition to this approach may be that it would cause the state to be responsible for monetary support of the child. The fact that this would be the outcome is not disputed; however, these cases are rare and would represent a rather inconsequential percentage of the amount of public assistance that is paid by states each year. For example, in the 2011-2012 fiscal year, Florida spent over twenty-four billion dollars on public assistance and Medicaid.[133] Since there is only one known case of

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[130] *See supra* notes 126-28 and accompanying text.
[131] *See supra* FLA. STAT. ANN. §§ 800.04, 794.05 (West 2014) in notes 43-45.
[132] *See* Fla. Dep't of Children and Families, Food Assistance Program Fact Sheet (2014) *available at* http://www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf (last visited Feb. 19, 2015) (As of October of 2014, a family of two with an adjusted income of $1,311 per month (100% of 2014 poverty) would qualify for $357 per month for food assistance and families of two with an adjusted income of up to $2,622 per month (200% of poverty guideline) are eligible to receive lesser amounts of food assistance).
[133] *Florida state budget and* finances, BALLOTPEDIA, http://ballotpedia.org/Florida_state_

a male victim of statutory rape being held liable for child support in Florida,[134] it is obvious that this one child would represent only an infinitesimal percentage of the public assistance and Medicaid funds Florida provides each year. Furthermore, with the limited earning capacity of the adolescent male victims, it is unlikely that the child support they are ordered to pay would be sufficient to exceed 200 percent of the federal poverty guideline of $15,930 per year for a family of two[135] in order to completely eliminate the need for public assistance funds.

Another possible argument against allowing male victims of statutory rape the option to terminate their parental rights and responsibilities is that it would allow all minor fathers to exercise this choice. This result need not occur. This note proposes that this option only be available when there is an instance of an adult woman who engages in illicit sexual intercourse with a minor male and takes the resultant pregnancy to term. This distinction is necessary and justifiable because sexual activity between peers does not involve the same risks of coercion or undue influence that exist in sexual activity between adults and minors.[136] As discussed previously, this distinction is already built into the statutes that make these sexual encounters criminally punishable in Florida and across the nation.[137] This distinction should be codified in an amendment to each state's statute that addresses termination of parental rights. The amendments should include the option for both male and female victims to voluntarily relinquish parental rights and responsibilities when a child is the product of intercourse, which violates the applicable statutory rape provision. An enumerated clarification that this option is not available when the mother and father were each under the statutory age of consent should also be included. It is important to note that allowing this option to be available to both male and female victims presents another option to female victims who become pregnant. This option could have the added benefit of allowing a resultant child the opportunity of life with one of their biological parents, as opposed to being aborted or losing both of his or her biological parents.

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budget#Fiscal_year_2015 (last visited Dec. 1, 2015). (Florida's total expenditures for the 2011-2012 fiscal year was $62,989,000,000. Public Assistance accounted for 30.6% and Medicaid accounted for .3% for a total of $24,565,710,000).

[134] *See generally Miller*, 688 So. 2d at 1024 (only known Florida case on the topic).

[135] Annual Update on the HHS Poverty Guidelines, 80 Fed. Reg. 3236 (Jan. 22, 2015) *available at* http://aspe.hhs.gov/poverty/15poverty.cfm#guidelines (last visited Dec. 1, 2015) (Public assistance available will vary by state, generally based on percentage of poverty level).

[136] *See generally,* Jones, *supra* notes 87-94.

[137] *See supra* Part II.

Giving male victims of statutory rape an option to avoid parenthood will help address the inequalities between the treatment of male and female victims of statutory rape who become parents. Without providing some form of protection from the economic, social, and psychological harm, which can be caused by male victimization, the statutory rape laws are fundamentally powerless for adolescent males.

VI. CONCLUSION: IT IS TIME TO STOP SACRIFICING MALE VICTIMS OF STATUTORY RAPE

The practice of holding male victims of statutory rape liable for child support is reminiscent of the 1884 English case of *The Queen v. Dudley & Stevens*. [138] In 1884, four men were stranded at sea in a lifeboat.[139] After twenty days, two of the men, Dudley and Stevens, decided to kill and eat Parker, a seventeen or eighteen-year-old shipmate who was already weak.[140] Four days later, the remaining three men were rescued.[141] At the subsequent murder trial, the men contended that they were in a perilous situation and would have died if they had not sacrificed Parker.[142] Likewise, in these statutory rape-child support cases, the courts are in a lifeboat with two children and are deciding to sacrifice the male victim. Dudley and Stevens' choice to sacrifice a young man, who was already weak, was morally and legally unacceptable in 1884, and is an equally unacceptable choice for courts to make today. In holding that there was no defense of necessity for murder, Lord Coleridge said, "[i]t is not needful to point out the awful danger of admitting the principle which has been contended for. Who is to be the judge of this sort of necessity? By what measure is the comparative value of lives to be measured? Is it to be strength, or intellect, or what?"[143] Courts today, when holding male victims of statutory rape liable for child support, are sending the message that the life of a male victim of statutory rape is comparatively less valuable than the life of a child born out of his victimization and that of a female statutory rape victim.

Despite the fact that most states now have gender-neutral statutory rape laws based on the premise that minors are incapable of consent, and despite the fact that the Florida Supreme Court and the United States Supreme Court have adopted that belief, courts across the country have decided that minor males are consenting to sex and, therefore, must pay.

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[138] The Queen v. Dudley & Stevens, 14 Q.B. 273 (1884).
[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] *Id.*
[143] *Id.*

These courts are saying that thirteen, fourteen, and fifteen-year-old boys are not victims when women who are twenty or even thirty-four years old have illicit sex with them and become pregnant.

The idea that these male victims are "consenting" to sex is contradictory to the statutory rape laws themselves. The Florida Supreme Court has actually opined that "whatever 'right'" children may have in consenting to sexual exploitation is outweighed by the interest in protecting them from "harmful physical and psychological effects of which the child may be wholly unaware."[144] How can courts say that children do not have a right to consent to sex, and then turn around and say that a male victim of statutory rape consented to sex and, therefore, must become a monetarily participating father? Scientific research has shown that due to developmental differences, what may seem like consent could actually be acquiescence or loss of control.[145] This fact has already been recognized in many areas of law throughout the civil and criminal systems.

Teenage fatherhood can have real societal, behavioral, educational, and economic consequences for these male victims. While female victims have opportunities to avoid these ramifications, male victims simply do not. Allowing male victims to terminate parental rights and responsibilities would provide protection and justice where none currently exists.

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[144] *Jones*, 640 So. 2d at 1088 (quoting *Schmitt*, 590 So. 2d at 418-19 n. 17 (Fla. 1991)).
[145] *See supra* Part IV. A.